No. 391

Office Supreme Court, U.S.
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Vol. IV - Pages 991-1200

TRANSCRIPT OF RECORD

IN THE

# United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 14071

GEORGE B. PARR, D. C. CHAPA, B. F. (TOM) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,

*Appellants,*

-versus-

UNITED STATES OF AMERICA,

*Appellee*

**Appealed from the United States District Court for the Southern District of Texas**

U. S. COURT OF APPEALS.
FILED
JUN 2 1958

(Original Record Received 19 )

EDWARD W. WADSWORTH
CLERK

and will execute any and all instruments and documents necessary to evidence its contract with this district?

3. That it will safely keep and safely receive and disburse the school funds according to law, and pay such warrants and/or vouchers that may be legally drawn on the funds by legal authority and that it will account for and report annually a statement of such to the Commissioner of Education, as is required by law. The condition of this contract is such that if the said bank shall perform all obligations hereinabove specified it shall be null and void; otherwise it shall remain in full force and effect.

The above provisions are given in addition to any remedy the pledges may have in any suit brought on this contract in any court in this state. Any suit arising out of or in any way connected with this contract shall be tried in the County of Jim Wells, State of Texas, and any court therein having jurisdiction of the subject matter thereof.

In witness of all which we have hereunto set our hands and the said Texas State Bank of Alice has caused these presents to be signed with its name and by its president and attested and sealed with its corporate seal the day and year first above written.

Signed Texas State Bank of Alice Principal by B. F. Donald, Jr. Cashier.

The State of Texas, County of Jim Wells, before me, on this day personally appeared B. F. Donald, Jr., Cashier of Texas State Bank of Alice, of Alice, Texas, known to me to be the person and officer whose name is subscribed

to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of the aforementioned bank, a corporation, for the purpose and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the 3rd day of December, A. D., 1951.

Signed J. W. Roach, Notary Public in and for Jim Wells County, Texas."

Those all read approximately the same, all such bonds, do they not?

A. Usually they do. That is a regular form.

Q. And we have just read the one dated 3 December 1951, which is here as Government's Exhibit 7, and to the same effect, but with different securities, the one for the 11th day of August, 1953 is here as Government's Exhibit 8, isn't it, and to the same effect as Government's Exhibit 6, the one dated 2 August A. D. 1949. That is the date at the bottom, isn't it?

A. The 2nd of August, 1949, yes.

Q. And it is Government's Exhibit 6?

A. Yes.

Q. Well, if any claim or demand be made on either D. C .Chapa, Octavio Saenz, Jesus Garza, Santiago Garcia, Jesus Oliveira and B. F. Donald for recompense or replacement for any funds alleged to have been illegally or improperly paid off during the years, you had a majority of designated members of the School Board on the board?

A. That is correct.

Q. No such demand was ever made?

A. No, sir.

Q. And no such suit was ever filed, and as far as you know, to this good hour, 1957, has this been done or made?

A. Not by the School Board, no, sir.

Q. Who is president of the Benavides Independent School District Board of Trustees at the present time?

A. Mr. Bercow from Freer.

Q. Who?

A. Mr. Bercow.

Q. How do you spell it?

A. I believe it is B-e-r-c-o-w. He has been a board member about a month, I believe. He has only gone to one meeting.

Q. Was he president when you all elected him?

A. Yes, that is right. He is an attorney.

Q. I see. Who are the other members besides Mr. Bercow and yourself?

Mr. Bottler: Your Honor, we fail to see the materiality of who are members of the board in 1957. This indictment deals with 1954. We have not objected before to the materiality of the questions, but it looks as though we are getting far afield.

Mr. Foreman: It is preliminary questioning, and I assure the Court I consider it material.

A. The other members from Freer are also new. We have three new members from Freer. Their names are Al Schoeneman and Pat Moss, and from Benavides, we have, besides myself, Attlee Parr.

Q. Who is that?

A. A brother of George Parr.

Q. Was he elected?

A. He was elected when I was elected, yes, sir, three years ago. Mel Canales and Hermillo Salinas, Jr.

Q. All right, sir. Now, I will get back to them later in my interrogation, but what is the occupation of Octavio Saenz at the present time?

A. He works for the Texas-Mexican Railroad Company. He is the, I would say, depot agent.

Q. Is he the only agent Tex-Mex has?

A. Yes, to my knowledge.

Q. Is there any other railroad in Benavides except the Tex-Mex?

A. Yes—no.

Q. Do you know how long Mr. Octavio Saenz has been employed by that company?

A. Many years.

Q. Do you know whether, as such, he has also been express agent for the American Railway Express?

A. Yes, he has been. We don't have an express agent now, but he has been in the past.

Q. As long as you had one, he was?

A. Yes.

Q. As such, does he handle the money and funds of the Tex-Mex Railroad?

A. Yes, he does.

Q. And in addition to being agent for it—when you say many years, is it back as far as you can recall as a boy, he was employed there?

A. Oh, yes.

Q. Does he have any other official position or any official position with reference to the City of Benavides?

A. Yes, he is the present mayor of the City of Benavides.

Q. By what authority, appointed or elected by a board, or elected by the people of Benavides?

A. I believe that he as serving on—he was elected last year. I believe he was elected last year.

Q. Has he not been elected mayor of that city twice since this indictment was returned?

A. I really don't know. He has been there four or five years—no, he hasn't been that many years.

Q. He is a family man, and has children?

A. Yes.

Q. Who is Santiago Garcia, other than as you have identified him that he works for your father. What is his present occupation?

A. He operates a filling station.

Q. For what company?

A. Magnolia.

Q. And how long has he so operated that station?

A. Quite a few years.

Q. Will you tell us the total length of service of Santiago Garcia from the time he went on the School Board of the Benavides Independent School District until he went off, February 10, 1954, whether that comprised exactly seven months?

A. I don't know exactly the amount of months. I understand he was there less than a year. I don't know exactly how many months.

Q. Do you know whether or not, during that time, he ever attended a single meeting of the board?

A. That I don't know. No, sir.

Q. At any rate, you know of no act or conduct on his part in connection with any of the affairs of the Benavides Independent School District, do you?

A. No, sir.

Q. And Jesus Garza, what is his occupation?

A. Oh, he does some ranching. That I know. I believe he might call himself a rancher.

Q. That is about all anybody does down there, isn't it, call themselves whatever they do? Isn't he an oil field worker also?

A. Not now, I don't think so. I believe he was years ago.

Q. What, if any official position, does Mr. Jesus Garza have as a result of the suffrage of the people of Benavides?

A. What official position?

Q. Is he not city marshal, and was he not elected so by an overwhelming majority of the people of Benavides last year?

A. Yes, I believe he is city marshal.

Q. And elected by the people of Benavides?

A. Yes.

Q. And that was last year, 1956?

A. Yes.

Q. What is the time and month, the date of your city election?

A. It is in April. I believe it is in April.

Q. All right, sir, and the indictment in this case, Criminal No. 12829, the United States of America vs. George B. Parr, and all of the others, it appears to have been filed in open court on the 6th day of March, 1956, doesn't it?

A. Yes, it does.

Q. Then each of these men, Mr. Saenz and Mr. Garza, were elected by the people of Benavides after that indictment was returned?

A. Yes, they were.

Q. Now, Mr. Vaello, what is the occupation of Mr. Jesus Oliveira?

A. Well, Mr. Oliveira owns a lot of land in Duval County. He does quite a lot of ranching, farming, he has some business property there, and I believe he owns quite a few rental properties, homes.

Q. Will you tell us, please, sir, where he lives with reference to the property described in your testimony yesterday, I believe in response to the phraseology of Mr. Bottler's question, the lot on which the Benavides Independent School is located? First, is it a lot or is a parcel of land, and if so, how much land is covered in the plan comprising the Benavides Independent School District Elementary, High School, gymnasium, band hall, cafeteria, athletic fields, et cetera?

A. I would say approximately 30 acres.

Q. Thirty acres?

A. Thirty acres of land.

Q. Then with reference — and the buildings themselves, excluding the athletic fields, from one exterior portion to the other of any one building would cover approximately 20 acres of that?

A. Well, it could, yes, sir.

Q. Now, with reference to the land, the 20 acres or 30 acres approximately, where is Mr. Jesus Oliveira's home located, with reference to the Benavides Independent School District grounds?

A. His home is across the street from the southeast corner of the school land.

Q. It is one of the closest homes to the school plant, isn't it?

A. Yes.

Q. And do you know who the regular nightwatchman is at the Benavides Independent School District?

A. The nightwatchman we have now?

Q. Yes, sir.

A. Yes, he is an old fellow, Elizondo I believe is his name.

Q. Do you know his name?

A. It could be Elizondo. I think that is his name.

Q. That is Simon Elizondo?

A. Yes, that is probably it.

Q. As a matter of fact, you know very few of the lower echelons of laborers in Benavides, isn't that true, Mr. Vaello? Isn't your circle of acquaintances more among the oil people and socially acceptable elite, rather than those of the laboring people?

A. I don't know how to answer that question.

Q. We will ask it another way. When you have a party, do you have working people there, or have Anglos representing the oil companies in your home?

A. I don't know. I guess I would have both.

Q. You would. At any rate, this Simon Elizondo is in bad health, isn't he?

A. I understand he is.

Q. And has been for several years, hasn't he?

A. I guess so.

Q. And isn't it true, sir, not only in bad health, but he has been a mental case, actually confined to mental institutions during various periods of time during the last several years?

A. I don't know about that. I have heard that.

Q. All right, sir. Isn't it true that there have been times when for days, without reporting to anybody, that is back from 1949 through 1953, that Simon Elizondo would be

absent, and that nobody would know he wasn't appearing for work unless it was reported either by Mr. Jesus Oliveira, or someone else, is that true or not?

A. I have no knowledge of it.

Q. Isn't it true Mr. Simon Elizondo is kept purely because he needs the job, and in concession of his long service, rather than his ability to perform the functions for which he is employed?

Mr. Wilkey: Your Honor, I will ask, in view of this long series of questions about events which this gentleman says he doesn't know, the jury be reminded the testimony in this case on which they must pass verdict is testimony of the witnesses, and not questions of counsel.

The Court: The jury has been advised several time. It is now 10:30, and I am going to suggest a recess. The jury may recess 20 minutes, and I will ask counsel and defendants to remain.

(The following proceedings were held out of the presence and hearing of the jury.)

Mr. Foreman: May it please the Court, I submit that the interruption and observation of the prosecuting attorney are not in the form of an objection at all, but merely a speech attempting to remove, or calculated to remove, the effect of what I consider important testimony, and that the Court, having already adjured and advised the jury that the speech, coming as it does come, is in the nature of a speech in advance of the time that speeches are permitted through our processes, and that Mr. Wilkey's observation is out of order in the form in which it is made.

The Court: I will agree it is out of order. I fear that we will have many such interruptions from both sides of the table during this trial, and I will again admonish counsel on both sides, that no such interruptions be made. I want to observe that when — during court yesterday afternoon, after the jury was excused, we had some discussion about holding over witnesses throughout this trial, which promises to last several weeks, and in which defense counsel, at one time, said would last six months. Yesterday afternoon I announced I would not hold all witnesses in the hall throughout the trial, and that when they finished their testimony they could be excused, and that they would be subject to recall by the defendants if the defendants needed their testimony in the defense. I also announced at that time that if any witness should be called by the Government and the Government had exhausted their interrogation, and defense counsel had exhausted their cross examination, that the defendants could avail themselves of that opportunity to ask questions which may be material to the defense, and that at the time defense counsel, Mr. Foreman strenuously raised an objection that it would not be proper, and I then advised him that he would not be required to do that, but that it would be allowed. I observe this morning that most of the so-called cross examination of the witness, Mr. Vaello, is of that nature, that it is going into the defense of the lawsuit, so do you now wish to do that, Mr. Foreman, and do you object to it?

Mr. Foreman: Your Honor, I do want to do it by whatever witnesses I can do it.

The Court: That was the suggestion of the Court.

Mr. Foreman: That is why I am doing it.

The Court: And I recall there was strenuous objection to it from defense counsel.

Mr. Foreman: No, sir, but this is one witness who is probably the busiest man in Duval County, and I would want to be able to excuse him.

The Court: I will annouce again, I will not require it, but it will be allowed.

Mr. Foreman: That is what I am doing, and hope to be able to excuse Mr. Vaello when he finishes. I am very fond of Mr. Vaello.

Mr. Bottler: Do we understand when counsel takes him over to present defense's matters, he then makes him his witness?

The Court: That will be proper.

Mr. Bottler: And will not be led.

The Court: Very well, Court will recess about 15 minutes.

(Short recess.)

Mr. Foreman: Shall I proceed?

The Court: You may proceed.

Q. (By Mr. Foreman) Do you know how long this Mr. Simon Elizondo has been employed in his present capacity as nightwatchman of the Benavides Independent School District Board of Trustees, I should say of the schoolgrounds and equipment?

A. It is my understanding he has been there many years.

Q. Twenty or 30 years?

A. It could be that many.

Q. And without whatever compensation or salary he receives he would be a public charge, would he not?

Mr. Bottler: That is a leading question, Your Honor, and we object.

The Court: Objection sustained.

Q. Do you know of any other income or property he owns other than his wages?

A. No, sir, I do not.

Q. And you say he is about what age man, please, sir?

A. Seventy.

Q. He would be in his 70's?

A. Yes, sir.

Q. Do you know what compensation he receives?

A. About $100 a month.

Q. Now, Mr. Valleo, do you know of any conspiracy, or any agreement, any device or plan between Jesus Oliveira and any of the named defendants, with reference to the misapplication of any school funds?

A. No, sir, I don't know of any.

Q. Sir?

A. I don't, no, sir.

Q. As a mater of fact, you know those all to be respected, honorable men?

Mr. Wilkey: Your Honor, he is leading. We object.

The Court: Is this being offered as character testimony?

Mr. Foreman: No, Your Honor. I am simply offering it on the issue of the conspiracy, as it is a circumstantial evidence case.

The Court: Does it not call for a conclusion?

Mr. Foreman: Withdraw the question.

Now, Mr. Vaello, what is D. C. Chapa's occupation?

A. Ranching.

Q. Does he not have oil production?

A. Yes, he has some.

Mr. Wilkey: That is a leading question. Counsel is continuing to testify himself, Your Honor. Objection.

The Court: Objection sustained.

Q. What, if any, official capacity does D. C. Chapa hold in Benavides or Duval County?

A. He has been, I believe, in the city either as a mayor, or one of the members of the city — he has worked for the county.

Q. In what capacity, if you know?

A. He used to be, I believe they called it, road supervisor, or something like that. He worked for this Commissioners Court.

Q. And when, if you know, was he in the office that you think might be mayor?

A. Sometime before the last war.

Q. And what is O. P. Carrillo's occupation?

A. O. P. is an attorney.

Q. Do you know where or of what institution he is a graduate?

A. I believe he went to Texas University, and then completed his schooling at — in San Antonio at St. Mary's.

Q. What school did you attend?

A. I went to St. Mary's in San Antone.

Q. And do you know how long Mr. O. P. Carillo has been a practicing attorney in Duval County?

A. Oh, for about six years, five years.

Q. About 1952, then?

A. Something like that.

Q. And where are his offices in Duval County?

A. I believe he has his office in San Diego.

Q. And do you know where his offices were when he first opened in San Diego in reference with the San Diego State Bank?

A. Yes, I do.

Q. Where were they?

A. In the second story of the bank building, the second floor.

Q. And do you know Oscar Carillo?

A. Yes, I do.

Q. Have you known him all his life?

A. That's right.

Q. How many children does he have?

A. I believe he has eight children.

Q. And what is his occupation?

A. Ranching, farming.

Q. Now, Mr. Vaello, with reference to your testimony concerning the building — I believe you built a bandhall and — is that true, a bandhall and cafeteria?

A. Yes, sir, that is correct.

Q. And you built them from excavation to the roof, exterior and interior, doing all the work that was to be done?

A. Yes.

Q. Do you recall what type roofs you put on those buildings?

A. What now? I am sorry.

Q. Roofs? What type roofs? Either built up —

A. Built up roof. Regular commercial type.

Q. Do you know how many ply it was, if more than one?

A. No, but usually they run around four, about four ply.

Q. As to this one, you don't know what it was?

A. No, without looking at the plans and specifications, I don't recall exactly how many ply.

Q. Do you know the names of the employees, the workmen who worked on that job?

A. Some of them, but I don't recall all of them. We have had several jobs since that time. I don't —

Q. Can you name anybody except the superintendent that worked on that job?

A. Well, we had the superintendent, Mike Canales, we had his brother, his chief assistant doing carpentry work. I could name Alberto Palacios, who was in charge of the steel work.

Q. Was that a subcontractor?

A. No, he was on an hour basis.

Q. How many employees worked altogether?

A. I don't recall that, Mr. Foreman.

Q. You wouldn't know whether there were 15 or 50?

A. No, sir.

Q. Mike Canales, and what is his brother's name?

A. Horacio.

Q. Horacio?

A. Yes.

Q. Mike and Horacio Canales, and Alberto Palacios are the only ones you now recall?

A. Most of the men are selected by the foreman and superintendent, Mr. Foreman.

Q. I see. You explained to me why, but the answer is that is all you now recall?

A. I can mention other local people that have done that type of work for us, but I don't know whether they worked in what building. That happened seven years ago.

Q. I can understand, and I can understand your reason, but we are only establishing whatever the facts were as to this specific job, and your recollection thereto. Then, did you or not do some work on the old — I believe you stated you converted the manual training room to a — what had previously been accepted as a manual training room to a garage, is that correct?

A. I didn't do any of the work, no, sir.

Q. I know you didn't do the hammering or the sawing or the plastering, but did your company do that?

A. No, sir, we did not.

Q. You did not?

A. Not to my knowledge.

Q. Do you know if any such was done, and if so, when?

A. No, I do not. I have no knowledge of any work, conversion work like that.

Q. Then as to the—did you—you stated that as soon as you finished this work, there would be new construction work done at the 30-acre site of the Benavides Independent School District plant?

A. No, no work that I know of.

Q. Well, was there any replacement of the work you did?

A. I don't know of any, no, sir.

Q. Well, could it be such work was done, and you

didn't have any occasion to know about it, prior to February 10, 1954 after you left the grounds, Mr. Vaello?

A. Prior to that?

Q. Yes, sir.

A. Not small repair work that is usually done every year, maintenance work and that sort of thing.

Q. When did you complete such work, as you have testified about in response to Mr. Bottler's question, what month of what year?

A. I did not understand the question.

Q. What month of what year did you complete such work as you did, or your company did?

A. Complete?

Q. Yes, sir.

A. On one of the buildings, around March, March or April, and on the other building—

Q. Let's get the year.

A. Oh, 1950.

Q. Yes, sir.

A. And on the other building, I would say September or October, 1950.

Q. Do you know whether either one of those roofs were replaced in 1951?

A. No, I have no idea, no, sir.

Q. As far as you know, they both might have been, might they not?

A. 1951?

Q. Yes.

A. Replaced completely?

Q. Whatever—yes, I assume, or any other construction work in connection therewith?

A. They might have been repaired, but I doubt if they were replaced, Mr. Foreman. They were put there by

Moore Roofing Company, regular roofing contractors. They are usually 15 to 20-year type roofs. Of course, some of the roofing people do have to come back once in a while to repair their roofs, the work, you know.

Q. Your testimony is that if any repair was done inside of 15 years it was because of defective workmanship of one of the subcontractors?

A. Well not necessarily. It could be. Usually, the regular process is to call back the people that have done the work.

Q. Well, the answer is, as to whether it was done or not, you do not know?

A. No, sir, I do not know.

Q. Because after completing the job in February or March of 1950, you would have no occasion to give it your attention, supervision, or make an investigation until again in or about 1954, when you were on the board again?

A. Yes, that is right.

Q. And you are a very busy man in your various activities, are you not, Mr. Vaello?

A. Well, yes.

Q. And you serve, not only the City of Benavides, but your company does business throughout that general area of contiguous territory, Duval and other counties, don't you?

A. Yes, sir.

Q. Insofar as the policy and general direction of the bank is concerned, as distinguished from the detail work, you are the executive officer of the Merchant's Exchange Bank of Benavides, aren't you?

A. Yes.

Q. Just for the geography only, the San Diego State Bank is located where?

A. San Diego, Texas.

Q. And that is approximately how many miles from Benavides?

A. Sixteen.

Q. And in what county is it?

A. Duval County.

Q. And the Texas State Bank of Alice is located at Alice, Texas, is it not?

A. Yes, sir.

Q. And in what county is it?

A. Jim Wells County.

Q. And the Benavides and San Diego banks are in Duval, the same county, and the Texas State in another, in Jim Wells?

A. Yes, sir.

Q. By the way, who was Jim Wells, do you know?

A. Who was Jim Wells?

Q. Yes, sir.

The Court: If it were material, I know who Jim Wells was, and I would instruct the jury, but I don't think it is.

Mr. Foreman: I only wanted—if it is material, I only thought it might be helpful in establishing he was a political leader with power throughout the southwest of Texas.

The Court: I think you would be indulging some conclusion, and I will instruct the jury not to consider any of the characterizations about Jim Wells, who has been dead many years.

Q. Mr. Vaello, at the time you agreed to accept appointment to the School Board, was it—did you likewise specify that you were to be president of the board?

A. No, sir, I did not.

Q. Did you know that you were to be?

A. I don't think so. I wasn't told that. I was told I would replace one of the trustees, and that trustee would be Octavio Saenz.

Q. Was he or not president?

A. He was then.

Q. Did you or not, in your—in demurring the acceptance, did you or not state that you would have to have a conversation with someone before you agreed one way or the other then, or give your answer?

A. When I agreed to accept?

Q. Yes, sir.

A. That I would have—

Q. When you were asked to accept and before you accepted, did you not state, before you gave your answer, before you would accept, you needs must confer with someone, some other individual, to-wit: Jake Floyd?

A. I don't recall that, no, sir.

Q. And have you heretofore ever testified that you did so talk with Jake Floyd before agreeing to accept appointment?

A. I don't recall making that statement. He is an attorney and I do business with him. I go to him for advice, but I don't recall making that statement.

Q. Did you or not talk with him when—before you accepted appointment?

A. I talked to him, I believe it was after we were already organized as a board, but I don't recall talking to him before, no, sir.

Q. All right. That is the answer, and who is Jake Floyd with reference to the Freedom Party?

A. I don't know. I have heard a lot about his being the

head of the Freedom Party, but I personally don't believe that.

Q. Who, in Duval County, do you believe is the head of the Freedom Party?

A. I don't believe they have any one person that is the head of it.

Q. What, with reference to the leadership and activity in the Freedom Party does one Donato Serna do? Is he active or not?

A. He is active, yes.

Q. Do you know anyone more active in the interests of the Freedom Party than Donato Serna?

A. Yes, I think some of these folks in Benavides are more active than Donato Serna.

Q. Donato Serna is not in Benavides?

A. No, he is not.

Q. In the county is where I directed my question. Do you know anyone in the county more active than Donato Serna?

A. Yes, I know quite a few individuals more active than Donato Serna.

Q. Is Richard Barton one of those?

A. Yes, he is in that group.

Q. More active than Donato Serna?

A. I think he spends more time politically than Donato Serna.

Q. But Donato Serna is looked to as one of the leaders of the Freedom Party?

A. I have heard that, yes.

Q. Now, who is the present superintendent of schools of the City of Benavides?

A. The present superintendent of schools?

Q. Yes.

A. Yes, sir, A. N. Saenz.

The Court: J. N.?

A. A. N. Saenz, Dr. A. N. Saenz.

Q. Now, Mr. Vaello, was R. W. Milligan former superintendent of schools there?

A. Yes, he was.

Q. And for how long?

A. At least 20 years.

Q. And when did he cease being superintendent of schools?

A. A few months ago.

Q. About your best judgment, was that in '56 or '57?

A. '57, this year.

Q. Then, did you have anything to do—did his politics or being a member of the Old Party have anything to do with his being discharged?

A. His politics, no, sir.

Q. Did you have anything to do with his being discharged?

A. No, sir. I voted in favor of discharging him.

Q. Did you not campaign for his being discharged?

A. No, sir.

Q. Sir?

A. No, sir.

Q. Did you not attempt to induce Canales to vote for his discharge?

A. No, sir, not Mel Canales.

Q. Did you or not make any threats to any of the other members of the Board of Trustees of the Benavides Independent School District that they would be indicated if they did not vote to discharge—

A. No, sir, I did not.

Q. —Milligan? Did you attempt to have R. W. Milligan discharge from the school all of the members of the Old Party, teachers, janitors, groundworkers and maintenance men, employees of the district who voted with the Old or the Parr Party? Did you or not?

A. No, sir.

Q. Did you offer any inducement to Hermillo Salinas for his vote to discharge Milligan?

A. No, sir.

Q. Did you or not at your bank make a loan for $1000 unsecured to Hermillo Salinas at the time of the discharge of R. W. Milligan?

A. He has made several loans there. In fact, he has made, I would say, half a dozen loans in the last year of so.

Q. Well, do you know whether one of those loans was at or about the time of the discharge of R. W. Milligan?

A. No, sir. I don't recall what time this loan you are speaking of was made.

Q. Did you okay a loan to him this year?

A. This year, I think I have okayed about two or three loans.

Q. Did you okay one for $1000?

A. I might have, yes, sir.

Q. Was it secured or unsecured?

A. Oh, I know I have one there that is unsecured. I think it could be Mr. Oliveira there signed that $1000 loan. I know he signed one or two with him as a co-signer.

Q. Was this loan—it is your testimony that the unsecured $1000 loan is signed by the defendant Jesus Oliveira?

A. Well, no, but I believe it could be. We require another signature on an unsecured loan, loans of that amount.

Mr. Foreman: That is all, Your Honor.

Q. (By Mr. Bottler) Mr. Vaello, you were asked about Jesus Oliveira. You say he did business at your bank?

A. Yes.

Q. And he owns a farm and implement store there?

A. Yes, sir.

Q. Does he not also own two filling stations in Benavides?

A. Yes, I believe he owns one that I know of.

Q. Does he own other business property and stores in Benavides?

A. Yes.

Q. And does he own ranches in Duval County?

A. Yes, sir.

Q. He is one of the wealthiest men in Benavides, is he not?

A. He has the reputation of it, yes.

Q. He lives in a large white mansion in Benavides, does he not?

A. It is a large home.

Q. I will hand you a photograph identified as Government's Exhibit 201, and ask you to inspect it and tell us if that is not a picture of Jesus Oliveira's home in Benavides?

A. Yes, this does look like a picture of his home.

Q. This large white residence on the lefthand side?

A. Two story, yes.

Mr. Bottler: We offer in evidence Government's Exhibit 201.

Now, Mr. Jesus Oliveira was also—

Mr. Foreman: We have no objection, and join in offering it, Your Honor.

The Court: Government's Exhibit 201 is admitted in evidence.

Q. Mr. Jesus Oliveira was also a director in the Texas State Bank at Alice in the year 1951, 1952, and 1953, was he not?

Mr. Foreman: I object to his leading the witness, Your Honor.

Mr. Bottler: Your Honor, I am going over matters in which Mr. Foreman made this witness his, matters which were not proper subject of cross examination. We are entitled to lead him when we take the witness.

The Court: You are now crossing the defensive testimony given by this witness? What says defense counsel?

Mr. Foreman: I know of no rule that authorizes him, by his mental attitude, to change the Rules of Evidence against leading the witnesss one has offered originally and say it is cross. If that was so, the Rules of Evidence would be reduced to being rules of men rather than of law.

Mr. Bottler: Your Honor, in reply to that I will say that if this witness had been called back by the defense as a part of the defendant's case, put on the stand and asked these questions, certainly the Government would have the right to cross examine. Because the defendant has chosen to make him their witness when he was put on the stand by the Government as part of its case, does not change the situation in regard to our right to lead.

The Court: The right of the defendant to make a defense witness of any of the Government's witnesses was announced by the Court yesterday afternoon, and again this morning. It was also announced that you would not be required, but that you may make such use of any Government witness, and it appears to the Court that this question is on the

nature of a cross examination of matters—of defensive matters covered by defense counsel with this witness. Does defense counsel have anything further to say?

Mr. Foreman: Yes, Your Honor. I think the record is devoid of any reference by me to a directorship of Mr. Jesus Oliveira in any bank at all, and that is the question which is before him. He has asked him affirmatively, stated in a leading and suggestive question, that he is a director of a certain bank, and if I asked that question, I fail to recall it, and I don't believe the transcript will reveal it.

The Court: There was a question by defense counsel of this witness relative to Mr. Oliveira's financial standing, that he was a large landowner, rancher, farmer, owns rental property, and evidence of that nature. It appears to the Court that the Government is further developing matters raised by defense counsel by way of defense—

Mr. Foreman: We are not objecting to the testimony, Your Honor. We welcome it, are glad it is coming into the record. What we are objecting to is the leading, suggestive nature of the question. It is the form of the question.

The Court: I will overrule the objection.

Q. (By Mr. Bottler) Now, did you know, in the years 1951, 1952, 1953, and 1950, that the defendant, Jesus Oliveira, ranchowner, bank director, large property owner, one of the wealthiest men in Benavides, was also receiving salary as a nightwatchman for the Benavides Independent School District?

Mr. Foreman: May it please the Court, we object to that question as duplicitas and as leading and suggestive, and as argumentative.

Mr. Bottler: I will rephrase, Your Honor.

The Court: All right, sir.

Q. Do you know that the defendant, Jesus Oliveira, in the earlier years of 1950 and 1951, was receiving a salary from the Benavides Independent Schools for ostensive duties as nightwatchman?

A. No, sir.

Mr. Foreman: I object to that.

The Court: Objection sustained.

Mr. Foreman: We ask that the Jury be instructed not to consider it, as the witness answered before the Court ruled, or as the Court ruled. The witness answer the question, Your Honor, to the jury.

The Court: I will sustain it on the use of the word ostensive duties as nightwatchman. I will instruct the jury not to consider the answer. I will permit the question whether he was employed as nightwatchman.

Q. Do you know whether or not the defendant, Jesus Oliveira, was employed as a nightwatchman? Had you ever heard he was employed as nightwatchman in the years 1950 and 1951?

Mr. Foreman: I object to that as calling for hearsay.

The Court: Objection sustained.

Q. All right. Did you ever know that the defendant, Jesus Oliveira was employed as a nightwatchman in the years 1950, 1951, 1952?

A. No, sir.

Q. Now, turning your attention to the depository pledge contracts about which Mr. Foreman inquired of you, I will

ask you what per cent interest was paid on the public funds by the Texas State Bank of Alice during the time that you were a trustee, and they were the depository, that is 1953 and 1954?

A. I have no record of ever seeing any moneys paid for interest to the school district.

Mr. Foreman: I object to that as not responsive. His answer is equivalent to saying he doesn't know and saying the record does not establish. He should have a record or any occasion for having a record, and the suggestion is one thing here—

The Court: It is suggested that the question be answered directly, if the witness knows the answer.

Mr. Bottler: Will you repeat the question?

The Official Reporter (Reading): Now, turning your attention to the depository pledge contracts about which Mr. Foremon inquired of you, I will ask you what per cent interest was paid on the public funds by the Texas State Bank of Alice during the time that you were a trustee, and they were the depository, that is 1953 and 1954?

Mr. Foreman: We make the further objection, there is nothing in the indictment with reference to the payment or nonpayment of interest by the Alice State Bank to any one of the 20 counts, therefore it is extraneous, immaterial, and irrelevant to any issue in this case.

Mr. Bottler: Your Honor, in reply, we would say that the indictment sets out clearly that the scheme and artifice to defraud contemplated the control of the Benavides Independent School District by the defendant, including the Texas State Bank of Alice, and it is material to show the control.

The Court: Objection overruled.

Mr. Bottler: Would you read back that question once more? I am afraid, from the interruption, I have lost track of it.

The Officail Reporter (Reading): Now, turning your attention to the depository pledge contracts about which Mr. Foreman inquired of you, I will ask you what per cent interest was paid on the public funds by the Texas State Bank of Alice during the time that you were a trustee, and they were the depository, that is 1953 and 1954?

A. Not of any that I know of, Mr. Bottler.

Q. Do you also have a depository for the Benavides Independent School District at the present time?

A. Yes, we do.

Q. And what bank is that?

A. That is the First State Bank of San Diego.

Q. Does that bank pay interest on school funds?

A. I don't believe it does, Mr. Bottler. I have no record of ever seeing any.

Q. Do you put out a contract for public bids on it?

A. Yes, we do. We usually do.

Q. All right. Now, what percentage, if you know, of Latin-American men change their names after they are grown?

A. A very small per cent.

Q. All right. Mr. Foreman asked you about the other members of the school board who went on the board from Benavides in February 1954. I will ask you, did you select them because you thought they were honest and capable, or because you thought they could be handled so you could have constrction contracts?

Mr. Foreman: Your Honor, in this connection, we were not attempting to imply they were dishonest, and did not mean to do so at the time, and, on the other hand, meant to imply they were honest and therefore would have taken any action their oath of office required them to do, such as filing a lawsuit. We submit they are honest, integrous, dedicated to their duty, and make no contention they are otherwise.

Mr. Bottler: If Your Honor will recall, this defense attorney asked this witness if he accepted the position of school trustee because he was in the business of construction, and had turned down the job of county judge because he wasn't building roads and bridges, and I think certainly we are entitled to ask this question.

Mr. Foreman: I am not objecting. I am simply stipulating that which he is trying to prove.

The Court: Very well. You may answer the question.

Q. Did you select these men because they were honest, and capable, and could do a good job with the school district?

A. Yes, sir.

Q. Are you active politically?

A. No, sir, I am not.

Q. Are Calvin North and Joe DeLeon active politically?

A. No, sir, they are not.

Q. Frank Vaello, Jr.?

A. No, sir.

Q. Did you select men who were not active politically in order to do a good job with the Benavides Independent School District?

A. Yes, sir.

Q. Now, you were asked concerning the election of Octavio Saenz as mayor, and Jesus Garza as city marshal. I will ask you if it is not true that the election judges to that election were members of the Old Party, if you know?

A. No, sir, I don't know. Let me have that question again?

Q. Now, does everyone in Benavides pay their utilities, or do the poorest class of people, are they not required to pay utility bills?

Mr. Foreman: Your Honor, I have no objection to this as far as it being damaging or otherwise, but it looks to me like going far afield. There are a good many things I would like to ask about if we are going to broaden the base of this case, but I do submit, in the interest of time, it is immaterial and irrelevant.

The Court: I think I can take judicial notice, if they have connections for utilities and they continue to get their utilities, they do pay.

Mr. Bottler: Not in Benavides, Your Honor. And as long as they continue to vote for the Old Party and keep them in power, they don't have to pay for their utilities, do they?

Mr. Foreman: We object to that as leading, immaterial, inflammatory, prejudicial, as partisan politics, and as none of the jurors can vote on the Benavides election, and a speech in behalf of the Freedom Party.

Mr. Bottler: I object to counsel's—

The Court: The objection is unnecessary. The jury has been instructed that its verdict will be arrived at on sworn testimony, and not by comments of counsel.

Q. (By Mr. Bottler) If Jesus Oliveira had participated in this conspiracy, of which he is charged, to misappropriate, and the scheme and artifice to misaappropriate school funds, would he have told you about it?

Mr. Foreman: We object to that as calling for a conclusion of the witness, Your Honor.

The Court: Objection sustained. You may ask if he did tell him.

Q. Did he ever tell you about it?

A. No, sir.

Q. Did any conspirator ever tell you about his conspiracy to steal funds from the Benavides Independent School District?

Mr. Foreman: I object to that as unwarrented, unauthorized, unsworn testimony of the prosecution, and an assumption of that which has not yet been proven, that these or any of these men were conspirators, and degoratory insinuations on the defendants without evidence to support it, and a hypothetical question not based on anything in the record.

Mr. Bottler: Your Honor, the question was, did any conspirator, not referring generally, ever tell him about a conspiracy. He had asked this witness—

The Court: I think the objection is to the use of the word conspirator, and I will sustain the objection, and instruct the jury not to consider the use of the word conspirator. I suggest, if you are referring to the defendants, you refer to them as defendants.

Mr. Bottler: I was not referring to defendants. I was asking him the question, in general, whether or not he

had ever received word of any criminal activities on the part of someone.

The Court: On the part of someone else?

Mr. Bottler: Yes, sir.

The Court: Well, it is immaterial.

Q. (By Mr. Bottler) Now, the—you testified that a subcontractor put on the roof of those buildings of the Benavides schools that you built?

A. Yes, sir.

Q. And what was the name of that company?

A. It is the Moore Brothers Roofing Company.

Q. Those roofing contractors have some guarantee on their roofs?

A. Sometimes they do. If you ask them for it.

Q. Did you receive any complaints from the school board about the roof out there being bad, or any repair work that should be done on them between the time the buildings were built and February of 1954?

A. No, sir.

Q. Now, you say that you had an audit made when you went into office in February of 1954 of the school accounts for the school year 1953-1954?

A. Yes, that is right. Yes, sir, we did.

Q. Had any audit been made by the previous school board of their acts?

A. I don't know. I don't know, sir.

Mr. Foreman: I can't hear the witness.

A. I don't know whether any previous audits were made.

Q. Now, did you ever discuss with any of the defendants any discrepancy shown by that audit report?

A. Yes, with one of the defendants.
Q. All right. Who was it?
A. D. C. Chapa.
Q. And when did you talk to him about it?
A. After we received the first audit report.
Q. All right. Approximately when was it?
A. April or May.
Q. Of what year?
A. 1954.
Q. Was there anyone else present besides yourself and Mr. Chapa?
A. No, sir.
Q. What did he tell you about the discrepancy?

Mr. Foreman: We object to that being received as to any other defendant except as to Mr. Chapa. We object on behalf of each defendant and as to each count, and ask that the Government specify as to what counts they offer this testimony, and that the testimony be limited in its consideration by the jury to such counts as the Government specifies.

Mr. Bottler: We will offer it, at this time, against Mr. D. C. Chapa on all counts.

The Court: It will be so received, and the jury is instructed not to consider the testimony relative to the conversation with D. C. Chapa except as it concerns the case against D. C. Chapa, and not against any other defendants.

Q. What did he tell you about the discrepancies shown by the audit report?
A. Well, I discussed with him—I asked him first about some items. I forget the items in that report that the—our auditors had marked on the list of various discrepancies,

and on D. C. Chapa's tax account, and I asked him would he mind coming to the office and meeting our auditor, and maybe he could straighten those discrepancies out.

Q. What did he tell you?

A. He said he had been advised by his attorney not to—

Mr. Foreman: Not to what, sir?

A. —not to discuss the matter with anybody.

Q. Did he ever come to the office and go over with the auditor his accounts?

A. No, sir.

Q. Now, were you ever on the school—

Mr. Foreman: May it please the Court, that last question and answer, we object, except, and move that it be stricken on the grounds it calls for hearsay. This man could not possibly know whether or not D. C. Chapa ever went to another man's office and talked with another man about something.

The Court: Will you read the previous question and answer?

The Official Reporter (Reading): Did he ever come to the office and go over with the auditor his accounts?

Answer: No, sir.

The Court: Objection sustained, and the jury is instructed not to consider the question or the answer.

Q. Did he ever come to your office and discuss these various discrepancies, about which you asked him?

A. No, sir.

Q. Now, were you on the Benavides School Board prior to February, 1954?

A. Prior to, on the school—

Q. On the Benavides School Board prior to February, 1954?

A. No, sir.

Q. Do you know what Octavio Saenz, Jesus Garza, or Santiago Garcia did as trustees on the school board prior to the time you went on there?

A. No, I do not.

Q. Do you have any knowledge of whether their activities had been as charged in this indictment, or not?

A. No, sir, I do not.

Q. Now, did you have an audit made for the years prior to 1953?

A. No. No, I don't recall of any audits except for that one school year, 1954.

Q. Did you ever try and find the canceled copies of checks and voucher records, supporting records for the years 1949 through 1953?

A. No, sir.

Q. Did you ever find them?

A. No, sir.

Mr. Foreman: He said he didn't try to find them.

Q. Did you ever look for them?

A. I believe quite a few people have looked for them.

Mr. Foreman: I object to that as hearsay.

The Court: Objection sustained.

Mr. Bottler: I withdraw the question.

Mr. Foreman: Request the jury be instructed not to consider it.

The Court: The jury is instructed not to consider the answer.

Mr. Bottler: Would you mark these for identification as Government's Exhibits 202 and 203?

(Two photographs tendered to the Clerk and marked Government's Exhibits 202 and 203.)

Q. (By Mr. Bottler) I will hand you what has been marked for identification as Government's Exhibit 202, and ask you if you can identify it?

A. Yes, I can.

Q. What is it?

A. It is the primary school, grade school in Benavides.

Q. All right. Now, is that the building on the center of the photograph?

A. Both these buildings, they call—the high school is back over here, and this is 24 classrooms for the primary department.

Q. What is this building on the left?

A. That looks like the bus garage.

Q. All right. What is the building on the far right?

A. That should be the gymnasium.

Q. All right. I will hand you Government's Exhibit 203 and ask you if you can identify this?

A. Yes, I can.

Q. What is the building?

A. This little building holds all of the restrooms in the area.

Mr. Foreman: I can't understand the witness.

Q. Would you speak out, please?

A. I would call it the restroom building.

Q. And where is this located?

A. It is right back of one of the buildings, the building that you have in the center of the other photograph.

Q. All right.

Mr. Bottler: The Government offers Government's Exhibit 203 and 202.

Mr. Foreman: We have no objection, Your Honor.

The Court: They are admitted.

Mr. Bottler: No further questions.

2-374 RECROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Vaello, have you ever, at any time, in your various testimonies, various cases concerning the Benavides Independent School District, heretofore testified about any conversation with Mr. D. C. Chapa, concerning any alleged shortage or difficulties, or items revealed by the alleged auditors or auditors alleged report?

A. I am sorry, I don't understand your question.

Q. Well, first I will ask two or three preliminary questions.

You testified at Tyler, did you not?

A. Yes, I did.

Q. You testified at—about twelve or fifteen hundred miles west of there, at Fort Stockton, did you not?

A. Yes—

Mr. Bottler: Your Honor, we object to counsel's interpolation of twelve or fifteen hundred miles west, as completely immaterial. He should just ask a simple question.

The Court: It is completely immaterial.

Mr. Bottler: How far is Fort Stockton from Tyler, I object is immaterial.

The Court: Objection sustained.

Q. You testified at New Braunfels two or three times, did you not?

A. Twice, I belive. Twice.

Q. All right, sir, and I realize in the peregrinations of these Duval cases, have you—

Mr. Bottler: We object to counsel's continued testimony in his questions, and request that he ask questions directly.

The Court: Objection sustained, and it is suggested that counsel be factual in his questions, and not argumentative.

Q. Where else in the State of Texas, besides New Braunfels, Tyler and Fort Stockton have you appeared on the witness stand and testified generally in response to questions concerning the affairs of BISD in the last two or three years?

A. No other place except Houston, at this court and the other Federal Court.

Q. You testified here in a former trial of this case in November, in Houston?

A. Yes, sir.

Mr. Bottler: Your Honor, we object to defense counsel's continued argumentative conclusions, and ask that he ask factual questions.

Q. Is it a fact you did—

The Court: Objection sustained.

Q. Now, at any of these times, either here in Houston last November, or either of the two cases in New Braunfels, the case at Tyler, or the case in Fort Stockton have you ever at any time testified that you had any conversation with D. C. Chapa in May, April or May, of 1954 concerning any alleged report of the auditor?

A. I don't recall of any, Mr. Foreman.

Q. Then, the first time is this morning?

A. Yes, I believe so.

Q. Were you not questioned here in—around the hall in Judge Hannay's courtroom by the same individual, Mr. Bottler, who questioned you here?

A. Yes.

Q. That was last November?

A. Last November, yes.

Q. Thank you. Now, with reference to your knowing whether or not Jesus Oliveira was employed as a watchman in any capacity, or received compensation therefor in the years 1950 or 1951, or 1952, would there have been any occasion for you to have been so advised, Mr. Vaello, in those years as to who was employed as a watchman by the BISD board of trustees?

Mr. Bottler: This calls for a conclusion on the part of the witness, Your Honor. The same objection he made to some of my own.

The Court: Objective sustained. You may ask if he has been so advised.

Q. Were you connected with the board in any way in 1950, 1951 or 1952?

A. No, sir.

Q. Did you attend any of its meetings or examine its payroll?

A. No, sir.

Q. Then until you did go on the board in February, 1954, as to who was or was not an employee was not a concern of yours, was it?

A. That is correct.

Q. With refefence to the interest, sir, any paid on any funds—

The Court: Do you believe this will take long?

Mr. Foreman: Yes, Your Honor.

The Court: If so, I will suggest recess at this time until 1:45. The jury is excused until 1:45, and I will ask that counsel remain briefly.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: May I have your attention, please? We have spent considerable time. I want Mr. Valleo to remain. We have spent considerable time on the interrogation of the witness Joe Vaello. We have had direct examination, redirect examination, —direct examination then cross, and then redirect examination, and we are now in recross examination. I am going to suggest during noon recess, in the interest of efficiency and getting down to what each side wants to develop by the witness, both defense counsel and Government counsel talks with the witness and ascertain what he will testify to, and then when we return at 1:45, I think we can make more dispatch with his testimony. It is perfectly permissible for you

to, both sides, talk to the witness, and I am suggesting that that be done so when we return we can go more directly to what each side wants to prove by this witness.

Court will recess until 1:45.

Mr. Foreman: Your Honor, I am limited to what they ask about, and I don't intend to ask about—

The Court: You are still on recross examination. You were going into the matter of interest. You know what you want to develop. I assume the witness knows what the facts are on that subject, so I suggest you ask him, and when he does tell you, then you will know what questions to ask. I think that is fundamental.

Mr. Foreman: Yes, Your Honor.

The Court: Particularly with lawyers.

Mr. Foreman: Yes, Your Honor.

2-380 AFTERNOON SESSION—MAY 8, 1957

The Court: Be seated please.

Mr. Foreman: Your Honor, Mr. Oliveira, one of our clients, is not here.

The Court: Do you know where he is.

Mr. Foreman: We just sent in the hall to try to find him. It is still about one and three-quarter minutes.

The Court: Mr. Carrillo, do you know where he might be?

Mr. Carrillo: I am sorry, Your Honor, I do not know.

The Court: My watch is a quarter to two.

Mr. Foreman: May I look outside, Your Honor?

The Court: Very well.

Mr. Foreman: I am told that this gentleman may have relegated to his subconscious mind the hours of the last trial. We started at two instead of 1:45. That is probably the explanation, Your Honor. There couldn't be any other.

The Court: Well, if there is a prospect of waiting 15 minutes, Court will stand at ease until he arrives.

(The Court stand at ease until the arrival of Mr. Jesus Oliveira.)

The Court: Be seated, please. I will ask defense counsel to confer with all of his clients and suggest that they all be prompt in attendance.

Mr. Foreman: He is the only one I was afraid would be late, Your Honor.

The Court: Very well, you may continue.

JOE VAELLO,

being the witness who was on the stand at the time court recessed for lunch, resumed the stand at this time, and continued his testimony as follows:

2-381 RECROSS EXAMINATION, (CONTINUED)

Q. (By Mr. Foreman) I believe the last question had to do with the payment of interest, if any is paid, by the present school depository, to-wit the First State Bank

of San Diego. What was your answer with reference to whether or not any such interest has been paid by that depository since it was so selected, presumably in 1954?

A. I don't believe there has been any interest paid by the bank on our deposit.

Q. What is your relationship to the Merchants Exchange Bank? You are president of the Merchants Exchange Bank of Benavides, are you not, sir?

A. Yes, I am. Yes, sir.

Q. And are you or not depository for the common school district of the San Diego common schools?

A. No, sir, it is the Duval County Common School District. We are, yes, sir.

Q. The common school district depository has to execute the same standard bond as I read here with refernce to the Texas State Bank of Alice, on the independent school district?

A. That is correct.

Q. In which it agrees, likewise agrees, to pay 2-1/2 per cent on the daily balance?

A. It reads the highest interest allowed by law, or something to that effect.

Q. That is 2 per cent, isn't it?

A. No, sir, banks are allowed to pay 3 per cent now. It used to be 2-1/2 per cent.

Q. But it does allow for the payment of interest on the daily balance?

A. Yes.

Q. Tell the jury whether or not the Merchants Exchange Bank pays interest on the common school funds of Duval County?

A. No, sir, we do not.

Q. Isn't it true it just isn't customarily done there where there is no competition for being a depository, and where being a school depository is more of a burden than it is of profit to the bank, to pay any interest?

A. Yes.

Q. Do you consider the fact that you do not pay interest on the funds of the Duval County Common School District, or as president of the school board you do not insist on payment of interest by the First State Bank of San Diego on the BISD daily balances as any insidious insinuation as to a desire or intention of this bank to gain control or dominate either the BISD or the Duval County Common School District?

Mr. Bottler: We object, Your Honor, to the speech, and it asks for a conclusion.

The Court: Objection sustained.

Q. Mr.—with refernce to your reasons for selecting Mr. Frank Vaello, Mr. Joe DeLeon, and Mr. Calvin North to serve with you as the Benavides representatives on the BISD board on or about February 10, 1954, and the leading question that the reason in doing so was because they were men of integrity and honesty, and in whose probity you had faith, did the fact that one was your longtime friend, the other an employee of a company in which you owned stock, and the other your uncle likewise help you to make your decision?

A. Well, in other words, you asked me for my decision, why we selected these people?

Q. I am directing it as to whether or not, in addition to the fact that they were honest citizens, and that you had faith in them, as developed by the prosecution, is

it also true that their being close to you helped in making your decision in selecting them as your running mates, or fellow trustees?

A. Yes, that could be one of the reasons also.

Q. Then, now, with reference to the other question, and it was developed, I believe, that you do not take any part in politics, is that correct?

A. That is correct.

Q. Do you consider that your failure to interest yourself in politics, or your local government, either school board level, city level, or county level, makes you, perhaps, a better citizen?

Mr. Bottler: That calls for a conclusion, Your Honor, what he considers.

The Court: Objection sustained.

Q. Are there or not political meetings held at the lumber company, the Vaello Lumber Company, about which you testified before, and in the last two years?

A. In the last two years, I had a few meetings there when I ran for school trustee, almost three years ago.

Q. They were political meetings?

A. I wouldn't call them political. I don't believe any one party was represented there. It was mostly work that we had to do through the mails. I submitted statements through the mails asking people to vote for me, and a lot of any friends came around to help me.

Q. I see. And when was the last such political meeting or meetings, whether you would call it a meeting or not, held there since you ran for office? Have there not been such meetings held?

A. Not a political meeting.

Q. Have there been meetings at which political candidates, issues, and the decision upon which to vote upon at the polls were discussed?

A. There might have been. Those things do come up. I don't think we had any planned meetings, or conducted by any one party.

Q. Do you know of one Amador Caballero?

A. Yes, I know him.

Q. Is he not a politician?

A. He had run for several positions, yes, sir.

Q. Did he have rallies at your lumberyard when he was running?

A. Yes, he has been around there, but I wouldn't say they were rallies.

Q. At any rate, when people gather to discuss his candidacy and the possibility of voting for him, have such been held at your lumberyard?

A. Not as a planned meeting, no, sir. He has been around, and some of his friends came over, have come up and talked to me.

Q. You didn't have an ear-buster barbecue?

A. What now?

Q. You didn't have any refreshments served?

A. No, sir, I have an office there, a small office, Mr. Foreman, about 20 by 15, that only holds about five or six people.

Q. By the way, with reference to the conversation concerning that office asked you on redirect, did D. C. Chapa ever come to your office? How many offices do you have?

A. Well, I only have that office and the one in the bank.

Q. And do you—does anyone else use that office, or

your both—by the way, how far is the lumberyard from the bank?

A. About three or four blocks.

Q. And in addition, what proportion of your time would you say that you spent actually in either your office at the bank, or at the bank, in any given day? Would you say you spent as much as 30 minutes average a day, longer or less?

A. No, I spend more time at the bank than I do any other place.

Q. How much would you say you spend?

A. Well, you see this office at the lumberyard, when we opened our new place at Alice, we move all our stock and closed that place. We still have the building, still have the office there, and we still get a lot of correspondence, and I go up there and check the mail, oh, three or four or five times a week.

Q. Now, you are talking about the lumberyard office in Benavides?

A. Yes, for I don't use that office too much.

Q. As a matter of fact, do you keep any lumber stock or merchandise at Benavides?

A. No, we do not. There are a few old items there, but the lumberyard has been closed about two years, two or three years.

Q. Then your real operation of the lumberyard is at Alice, approximately 26 miles from your office at the bank in Benavides, isn't it?

A. Yes.

Q. You have considerable operation at Alice, do you not, sir?

A. Yes, sir.

Q. Then naturally, the lumberyard in Benavides is—you don't have any mail delivery at Benavides? You call for your mail?

A. No, sir. We still keep our phone in that office. We still have our postoffice box in the name of the lumberyard in Benavides.

Q. You mean that since it is practically a vacant business, no longer active, that whenever mail is put in your box at the postoffice addressed to you at the lumberyard, you run over to the lumberyard to open it, or do you open it at the bank?

A. No, sir, that mail usually goes to the lumberyard.

Q. You take it over there yourself?

A. No, we have a man that bring it over.

Q. I see, and yet there is no one there except the man that takes the mail?

A. Yes. You see, Mr. Foreman, we sell materials in Benavides from our Alice office, and some of the records on those accounts are still kept in Benavides, and some of our collections are made from the Benavides office for the Alice business.

Q. Who is there at the Benavides office lumberyard?

A. Well, we have a man that lives right there—in the yard. He has a home, and he drives from there, now, to Alice and back, and of course he checks the mail, and of course we have a lot of old accounts for the old place in Benavides. We still carry on those accounts in our books.

Q. I was only directing my inqury as to your own activities in that yard. Do you, when you have mail concerning the Benavides office, go to the Benavides lumberyard to read it, and when you have mail addressed to

Jim Wells or the Alice office, go over there to read it, or attend to all your correspondence from the bank?

Mr. Bottler: Your Honor, we object mainly because it is immaterial and time consuming as to any matter brought out.

The Court: Yes, what is the materiality of how the Vaello Lumber Company takes care of its mail?

Mr. Foreman: I was attempting to find out the time Mr. Vaello spent, and how Mr. Chapa would have known when and where to find this man at a given office, as he testified. He was asked if Mr. Chapa came to his office, and I was trying to establish if this man had office hours.

The Court: He was asked if Mr. Chapa came to his office.

Mr. Foreman: Yes, sir.

The Court: And what was his answer?

Mr. Foreman: He said he didn't.

The Court: You are trying to find out what office he didn't go to?

Mr. Foreman: Well, I was trying to establish he wouldn't have known how, when, or where to find this man at any given office or at any given time.

The Court: Hasn't that been pretty well developed?

Mr. Foreman: Probably so, Your Honor. I have gotten a lot of answers, but I haven't even asked the question until I established his practice. They were preliminary questions. I wanted—I haven't even established how long

he was at the bank, let alone any of the other given offices, however, I am not making an issue of it, and I don't think it is very material. I can pass on.

The Court: I fail to see how it is going to help the jury decide any issue.

Mr. Foreman: I would rather pass on than get in any colloquy over it.

The Court: Very well.

Mr. Foreman: That is all. Thank you.

2-390 REDIRECT EXAMINATION

Q. (By Mr. Bottler) When you testified in Houston last fall, did anyone ask you any questions concerning the conversation you had with D. C. Chapa in which you inquired about discrepancies shown by the auditors' report?

A. I don't recall that being asked before, that question, Mr. Bottler.

Mr. Bottler: No further questions.

2-391 RECROSS EXAMINATION

Q. (By Mr. Foreman) How many times had you conferred with your interrogator in that case, Mr. Bottler, prior to your taking the stand in the November trial?

A. I've been in his office three or four times.

Q. And had you not been before the grand jury?

A. Yes, I was before the grand jury one time.

Q. Was he or not there?

A. I don't think Mr. Bottler was there.

Q. Was your testimony there taken down?
A. Yes, I am sure it was.
Q. And had you not talked with Mr. W. D. Main?
A. Yes, I had.
Q. And you made him a statement?
A. A statement?
Q. Mr. Main. Had you made a statement? Whatever you told Mr. Main, had it been reduced to writing by Mr. Main so as to form a written statement as distinguished from—
A. No, sir, I don't believe I have ever made a statement in writing to anyone.

Mr. Foreman: That is all.

Mr. Bottler: No further questions.

The Court: Very well, sir. You may step down.

2-392 RICHARD BARTON,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

2-392 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. Richard Barton.
Q. Where do you live?
A. Benavides.
Q. How long have you lived in Benavides?
A. All my life.
Q. And what county is that?

A. Duval County.

Q. When were you born, sir?

A. The 29th of June, 1910.

The Court: Mr. Barton, I am going to have to ask you to speak out more clearly, louder and distinctly, so everyone in the courtroom can hear you.

A. Okay.

Q. June 29, 19-when?

A. '10.

Q. Were you ever an official of the BISD?

A. Yes, sir.

Q. What position did you hold?

A. I was a member of the school board.

Q. The Board of Trustees?

A. Yes, sir.

Q. When did you go on the Board of Trustees?

A. How long.

Q. When did you go on the Board of Trustees?

A. 1948 or 1949.

Q. Who was on the Board of Trustees at the time you went on the board?

A. Earl DeLaney and—

Mr. Foreman: I didn't catch the first name.

A. Earl DeLaney, Paul Green, W. C. Kelly, Octavio Saenz, C. G. Ramirez, and J. T. Garza, and myself.

Q. All right. Was there any change in the C. G. Ramirez representation on the board while you were there? Did he leave the board?

A. Yes, sir.

Q. Who was appointed to take his place?

A. Santiago Garcia.

Q. Do you know Maria Elva Garcia?

A. Yes, sir.

Q. What relationship, if any, does she bear to Santiago Garcia?

A. She is his daughter.

Q. Do you know Nita Elda Garza Olson?

A. She is my niece.

Q. What relationship, if any, does she bear to Jesus Garza?

A. Daughter.

Q. Is that Santiago Garcia and J. G. Garza the members who were on the Board of Trustees with you?

A. Yes, sir.

Q. Now, from the time you went on the board until the time you left, about how often did you meet with the school board?

A. Sometimes every month. Sometimes every three months.

Q. And who would be at those meetings?

A. Well, sometimes the three from Freer that was there with us.

Q. How often did the three from Freer meet with the rest of you?

A. About two or three times.

Q. Two or three times?

A. A year.

Q. All right, and the rest of the time who met?

A. We usually met, the three from Benavides.

Q. All right. Did you ever see George Parr at any of the meetings of the School District?

A. Yes.

Q. How often did you see him there?

A. Oh, about once a year or twice a year.

Q. And what, if anything, did he do when he would come to those meetings of the School District?

A. Well, he used to go and recommend to hire teachers, or a janitor, or something like that.

Q. Were his recommendations usually followed?

A. Yes.

Q. Was Mr. Parr a member of the Board of Trustees of the School District during any of the time you were a member of the board?

A. No.

Q. Who was tax assessor and collector for the School District from 1949 to February 1954?

A. D. C. Chapa.

Q. How was he paid?

A. He was on a salary.

Q. Paid by the month?

A. By the month, yes.

Q. Do you know O. P. Carrillo?

A. Yes.

Q. What, if anything, did he do for the School District?

A. Well, we hired him as a lawyer, you know.

Q. Were you present when he was hired by the School District?

A. Yes, sir.

Q. When was he hired?

A. Let's see. I am not sure, but 1953, I believe. Not sure.

Q. All right. Did the Board of Trustees vote on buying any office furniture for O. P. Carrillo when he was hired?

A. No, sir.

Q. Did they ever vote on advancing any money to O. P. Carrillo so he could buy his office furniture?

A. No.

Q. Did they ever vote to—

Mr. Foreman: If it please the Court, I have no objection to this witness testifying to anything that he knows about, but it hasn't been established that this witness was at all meetings of the school board, and the question assumes that he was, and I believe that the evidence will prove that he did not attend all meetings.

The Court: Very well. I suggest all questions be qualified within his knowledge.

Mr. Bottler: Yes, Your Honor. I will so qualify them.

To your knowledge, did the trustees ever vote on advancing funds to O. P. Carrillo so that he could buy office furniture?

A. No.

Q. To your knowledge, did the trustees ever vote to construct an office, refurbish an office for O. P. Carrillo in San Diego for his use as an attorney?

A. No, sir.

Q. To your knowledge, did the Board of Trustees ever vote to authorize Oscar Carrillo, Sr. to purchase oil and gas for the use in his personal and ranch vehicles, and charge that to the BISD?

A. No.

Q. What position, if any, did Oscar Carrillo have with the BISD?

A. He was the school secretary.

Q. Are you acquainted with Mr. Jesus Oliveira?

A. Yes, he is my first cousin.

Q. What did he—what was his occupation in the years 1949 through 1953?

A. He used to have a drygoods store and a hardware store.

Q. All right. Do you know the name of the man who was the nightwatchman in the Benavides school while you were trustee?

A. Yes, sir.

Q. Who was that?

A. Simon Elizondo.

Q. Was Jesus Oliveira a nightwatchman out at that school?

A. No, sir.

Q. Was he ever authorized to act as nightwatchman, and be paid a salary, at any meeting at which you were present?

A. No, sir.

Q. Did you ever make any effort to examine any of the original bank statements or canceled checks of the BISD while you were trustee?

A. Yes, I asked Oscar.

Q. Oscar who?

A. Oscar Carrillo, that I'd like to see the bank statement.

Q. Did he ever show you the bank statement?

A. And he told me—

Mr. Foreman: We object to this as to all defendants except Oscar Carrillo, and ask that the counts on which it is offered as to him be designated, and object to all counts designated as being offered.

Mr. Bottler: We will offer at this time as to Oscar Carrillo, Sr., and as to all counts.

The Court: Oscar Carrillo only?

Mr. Bottler: Yes.

The Court: Very well. The jury is instructed any testimony of this witness concerning conversations with Oscar Carrillo will be considered only by the jury insofar as it pertains to the several counts of the indictment as to Oscar Carrillo only, and not to any other defendants.

Q. (By Mr. Bottler) Did Oscar ever show you the bank statements after you asked for them?

A. He showed to me a yellow sheet of paper, you know.

Q. Was that the bank statement?

A. All the figures there.

Q. Was that a bank statement?

A. No.

Q. Did he ever show you the bank statements?

A. No.

Q. When Oscar Carrillo was secretary for the board, who kept the minutes of the School District meetings?

A. He used to keep the minutes.

The Court: I didn't understand.

A. He used to keep the minutes.

Mr. Foreman: I would like to fix the time, if he knows, when he was secretary, Your Honor.

The Court: I suggest that be done, and also ask the witness to speak out clearly so everyone can hear you.

Q. When did Oscar take over as secretary of the School District?

A. I'm not very sure, but I believe it was in 1953.

Q. All right, what time in 1953 that you can recall?

A. Maybe in the spring. When they moved the records from San Diego to Benavides.

Q. All right, and if that was early in 1951, say—

Mr. Foreman: May it please the Court, I object and except to the proescutor correcting or coaching or telling the witness how, to testify. It is leading and suggestive.

The Court: Objection sustained.

Q. When were the records moved, to the best of your recollection, from wherever they were moved to Benavides?

A. I don't remember. I don't recall.

Q. Well, was it at that time, or some other time that Oscar became secretary?

A. I guess about six months after. That is when Diego quit, or he was fired. I don't know.

Q. Do you know—strike that. How long has Simon Elizondo been nightwatchman out at the school?

A. I guess for 15 or 20 years.

Q. Now, when you were a trustee for the School District, did you ever receive any checks made out in a name other than your own?

A. No.

Q. Did you ever cash checks made out to somebody else, and use the money for your own—

A. No.

Q. —benefit? Did you ever get any gasoline or oil from the Conoco filling station in Benavides, and charge it to the School District?

A. No.

Q. Do you have any children?

A. Four.

Q. Do any of them work for the Benavides Independent School District?

A. No, sir.

Q. Have any of them ever received any checks from the BISD?

A. No, sir.

Mr. Bottler: No further questions.

2-402 CROSS EXAMINATION

Q. (By Mr. Foreman) Well, as a matter of fact, the oldest one of your children is about seven years old?

A. Yes, sir, she is eight.

Q. Eight. Had you told Mr. Bottler before he asked you the question? Had he asked you how old your children were?

A. No, sir.

Q. How many times have you talked with Mr. Bottler before you took the stand here today?

A. Just one time.

Q. When was that?

A. This morning.

Q. Did you talk with him last October or November?

A. Oh, yes, sir. The first trial, yes, sir.

Q. Well, I had reference to any time. I know you misunderstood and thought after you came up here this time. Where did you talk with him this morning, please?

A. There in his office.

Q. And you talked with him out in the hall also?

A. Oh, but we were not talking about the trial, about this case.

Q. Oh, you were just going over your testimony with him in the office, and just visiting with him as a pleasant association in the hall?

A. I was telling him about—

Q. I don't care what you were telling him. It is none of my business.

A. It was not about the case.

Q. Now, when were you in his office this morning, and at what time?

A. I guess about 8:30 or nine o'clock.

Q. And was that by appointment or at his request?

A. I went in there to see him.

Q. Did you have a prearranged appointment, or did you just go in on your own?

A. I went on my own because I was supposed to be here the 6th. That is Monday morning.

Q. Yes, sir, and you were just apologizing for being late, but that is no matter of mine. Did you talk about your testimony then?

A. Well, he asked me some questions about it then.

Q. When you were here last November, did you have such conferences with him then too?

A. Well, about the same thing, about the case.

Q. Is that on one or more occasions?

A. One.

Q. That is prior to your testifying in November that you talked with Mr. Bottler?

A. I was, you know, when the mistrial, I talked to him again.

Q. And subsequent to November, and this morning, you discussed with him your testimony again, correct?

A. Well, that is the times I talked to him in his office.

Q. Now, have you or not talked with him at Benavides, both at your home and at your place of business?

A. He went to talk—he asked me where some guys lived one time, and I talked to Main in Benavides.

Q. By Main, you mean Postal Inspector W. D. Main, do you not, sir?

A. Yes, sir.

Q. You had me doing that too, Richard. Was Mr. Bottler with Mr. Main when you talked with Mr. Main in Benavides?

A. No, sir.

Q. Well, when was it—how many occasions have you talked to Mr. W. D. Main about your testimony?

A. 1954, 1955, when that other postal inspector was with him, one that quit, Foley or Holley.

Q. Cauley?

A. That is right.

Q. Are you sure he quit?

A. I don't know.

Q. At any rate, you haven't seen him since?

A. I haven't seen him.

Q. You don't know whether he was transferred or not?

A. No, I don't.

Q. You don't know whether he was transferred over here from New Orleans, or not, do you?

A. No, I don't.

Q. Mr. Barton, did you talk with either Mr. Main or Mr. Cauley on one, or more, or several occasions?

A. I talked to him about twice, Mr. Main, not the other one.

Q. Is that back in 1954?

A. 1954 and 1955—1954.



Q. Did you make statements, a written statement at that time?

A. Yes, sir.

Q. And were those statements in the possession of Mr. Bottler at the time you talked with him, either in his office or elsewhere?

A. Yes, sir.

Q. Did you, in addition to that, appear before the Federal Grand Jury here?

A. Yes, sir.

Q. When was that, Mr. Barton?

A. I don't remember. I don't recall the month.

Q. Do you recall what year it was?

A. The last of 1955, or 1956.

Q. And did you or not—were you interviewed there by Mr. Bottler, the same prosecuting attorney?

A. Yes, sir, I was.

Q. And it is my understanding that you did see him, but didn't go into any great or extended conversation with him in Benavides, Mr. Bottler, is that correct?

A. Well, just like I told you a while ago. He went there asking for somebody. I saw him right in front of city hall, but I don't remember just who they was looking for.

Q. Did you go with him to help look for whoever they were looking for?

A. No, the other guy that was with me, Lucky Casas, went with him.

Q. L-u-c-k-y C-a-s-a-s?

A. That is right.

Q. And were there or not state officers, Texas Rangers, with Mr. Bottler at that time, Joe Bridges?

A. I think so. I'm not so sure.

Q. Now, let's get a little personal history of yours. What was your occupation in Benavides during the '40's and early part of '50?

A. I am a rancher and a farmer, and I got a night club since 1937. I have been in the same kind of business.

Q. What is the name of your night club?

A. The Silver Night Club.

Q. Have you had any other kind of club or place of entertainment other than the Silver Night Club?

A. No, sir.

Q. And where is this Silver Night Club located?

A. On Highway 339.

Q. From what, Benavides?

A. Benavides.

Q. In the city, or outside?

A. Out of the city limits about 100 feet. No, about 50 feet.

Q. Is it on land you call your ranch?

A. Yes, sir.

Q. Mr. Barton, what type night club was that up to 1952, say from 1949?

A. Well, I got a girl working there, running the business, and they was a lot of people that go there and dance. Now, they don't any more, but they used to. There were a lot of people from Freer used to go out there.

Q. What is El Caliche?

A. El Caliche is a place that was set on my property too, but it was for somebody else, not for me.

Q. Where was El Caliche with reference to your Silver Night Club?

A. It was on the same highway and about a mile from the city limits.

Q. And what type place was El Caliche, on your property?

A. It was just a beer joint.

Q. Just a beer joint?

A. Yes. Just a beer—we used to call it a beer joint.

Q. What did other people, more factual minded, call it?

A. El Caliche. That is the way everybody calls it.

Q. Wasn't it what is commonly known as a bawdy house?

A. I tell you, it was just the same as the Silver—they was a lot of people go and dance over there. I used to go there myself, and it was lots went there, Oscar used to go, Jesus used to go, Octavio Saenz used to go there. Octavio go not often, about once a year.

Q. As a matter of fact, do you know any male citizen in Southwest Texas, Victoria, Corpus Christi to Laredo, between the ages of 20 to 35 who wasn't calculated to be a guest there sooner or later?

A. I don't know.

Q. Isn't it true that it was—that is had from as many as 25 lovely young ladies, imported from New Orleans and Las Vegas, and California, in evening dresses, coiffured hair, manicured toenails, sitting around at the tables, soliciting drinks, and any other investments a customer might care to make?

A. I don't—why don't you check the license of that place?

Q. We will get to the license in a minute. Let's get to the nature of the place first, Mr. Barton. Did you have a license to operate a bawdy house?

A. I got a contract, a lease.

Q. What?

A. To that guy that used to own that place, and I brought them to you the day they had that mistrial, but I can send them to you.

Q. Was that contract and lease so that you might draw your skirts about you and remain pure and holy in case the authenticity of the operation, or authenticity of the ownership was questioned? Was that for evasionary purposes you now offer it, or a natural bona fide sublease or a lease?

A. Well, I tell you one thing, I am not afeared to have one of those places. I got one Silver Night Club, and if I was to own that place, I tell you, and they know, Oscar know too. He knows.

Q. Do you or do you not have a bawdy house on your land, regardless of who operates it?

A. Not that I know of.

Q. But you were there?

A. I used to go there once a week.

Q. Tell this jury whether or not there were cribs, little cubicles with cots attached to and adjacent to the dance floor so that the mistresses-in-waiting might retire with their selected quarry and remain until they might return, perhaps later in the evening? Is that a practice that prevailed at El Caliche on your ranch?

Mr. Bottler: Your Honor, I object to the question as being duplicitas, or part duplicitas. I got lost somewhere.

The Court: It is rather an extended question. I will permit the inquiry, but I think maybe you should shorten the question.

Q. All right. Did the girls hustle dates and fill them in a crib?

A. I don't know.

Q. What is your best judgment on that?

A. No.

Q. No. All right. Well, did the place have that general reputation?

A. Not to my knowledge.

Q. But if you had owned such a place, and just as I described, you would not have been ashamed of it, would you?

A. Well, something like that, yes. If you consider that place, yes, I would be ashamed.

Q. As a matter of fact, you had some kind of an office as a deputy sheriff or constable, during that time, did you not?

A. No.

Q. When were you such?

A. A deputy?

Q. Or anything, peace officer of any kind?

A. Not at that time. I was a deputy, let's see—that is about a year ago until December—until November 11. I went in in 1956 'til November, the last. I was six months a deputy.

Q. You never held a commission at any other time? That is the only time you have been such a officer?

A. A special deputy, I was one time. I went to San Diego when they set my place on fire, Silver Night, so I went and talked to sheriff in San Diego, that I told him I need protection, they try to burn my place of business, so he give me a special deputy card.

Q. What year was that?

A. 1951.

Q. And wasn't El Caliche running full blast then?

A. I don't remember.

Q. And did you not execute the lease you are talking about about that time?

A. No.

Q. All right. Mr. Barton, when did Santiago Garcia, this defendant over here with the glasses and crew-cut hair—stand up a minute so the jury may identify you—when did Santiago Garcia come on the school board?

A. I am not sure, but he was on the school board for about four or six months, something like that. I am not sure, but something like that.

Q. Four to six months?

A. Not very long. Maybe less.

Q. He resigned, did he not, February 10, 1954, the same day you did?

A. I don't know if it was the same day or not. I went there and resigned first, and I got out, and I don't know if they resigned that day or not.

Q. When did you resign?

A. February 10.

Q. Then, if it was four months he was there, November, December of 1956, January and February of—I mean 1953. I'm sorry. January and February of 1954, that would have been the length of the tenure of Santiago Garcia, wouldn't it?

A. I guess so. I do not know.

Q. Then, if checks were, pursuant to any agreement or otherwise between anybody else, issued to Nita Elda Garza in 1949 or 1950, 1951, 1952 or 1953, up to October, it was before Santiago Garcia had anything to do with the school board, wasn't it?

A. Yes, sir.

Q. Do you know anything about any such checks?

A. No, sir.

Q. As a matter of fact, Mr. Barton, you worked full time at the Silver Night Club, didn't you?

A. I work at the ranch.

Q. At the ranch?

A. That is right.

Q. What amount of time did you dedicate or devote to the Silver Night Club?

A. I go from ten to twelve, until we close, and sometimes eleven to twelve.

Q. At night?

A. At night.

Q. Did you or not attend all meetings of the Benavides Independent School District Board?

A. No, sir.

Q. As matter of fact, you attended only sporadically, spasmodically, occasionally, very seldom, isn't that true?

A. Well, sometimes once a month, sometimes every three months, and I don't know if they used to have a meeting between those. I don't know.

Q. You may have attended once a month for a couple of months, it might be three or four months before you attended another one?

A. It is a lot of nights they called me, I was just getting back from the ranch.

Q. What was there?

A. They was a lot of times they called me I was just getting back from the ranch, and I wish to take a bath and eat supper, so I didn't go.

Q. And as to what happened at any of those meetings, the ones you did not attend, you are not undertaking to testify?

A. I don't know.

Q. Did you make it a practice, whenever you did attend a meeting, having missed three or four months, to go back and read the minutes so as to acquaint yourself with the actions and activities of the other members of the board during your absence?

A. No, sir,

Q. As a matter of fact, it is most difficult for you to read, isn't it, Mr. Barton?

A. I can read. If I was to read the minutes, I can tell you. I read the paper every day.

Q. How much formal education do you have, please?

A. I went through sixth grade.

Q. Do you know how much education the other members of the board, Santiago Garcia, had? How long he went to school?

A. I guess to eighth grade or ninth.

Q. Do you know how long Mr. D. C. Chapa went to school?

A. I don't know about Chapa.

Q. Do you know whether D. C. Chapa went to school a day or two or not?

A. No.

Q. Do you know whether he can read or write the English language?

A. No.

Q. And C. G. Ramirez, do you know whether or not he went to school one day in his whole life?

A. No.

Q. Could he read or write either English or Spanish?

A. Spanish. He can read Spanish.

Q. He can read Spanish?

A. Yes.

Q. Can he read English?

A. No.

Q. Can he speak English?

A. No.

Q. Do you know, of your own knowledge, how many years education in school, to what extent Jesus Garza went to school?

A. I think he finished school.

Q. To what grade?

A. I don't remember. That used to be nine. They used to finish at nine or ten, something like that.

Q. A ninth grade graduate was a high school graduate down there?

A. That is right.

Q. And a grammar school graduate was about a seventh grade graduate, is that not true?

A. Yes.

Q. Do you know whether Jesus Garza did any more than finish grammar school?

A. I don't know.

Q. And the same thing with reference to Octavio Saenz? Do you know whether he finished anything more than grammar school?

A. I don't know.

Q. You do not know?

A. No.

Q. Now, Mr. Barton, actually these men represent some of the best educated adult male citizens of Benavides, don't they? Including yourself, isn't it true that is the usual standard of scholastic attainment of the adult male citizens of Benavides? Of men your age and their age, isn't that right?

A. Yes, I think so.

Q. In other words, formal education in Benavides has not been accentuated, as it were, has it, sir?

A. No.

Q. Isn't it true that anyone that wants to get anything more than a third or fourth grade education, up to the last four or five years, in Benavides would send their children either to Corpus Christi or to Laredo or to San Antonio to private schools; isn't that correct?

A. You are talking about now —

Q. A few years ago?

A. Oh, when they finish school?

Q. Yes, sir.

A. I guess so. I don't remember. I was too little.

Q. Well, even when you were growing up, anybody that was going to get an education above grammar school level would usually go to Corpus Christi?

A. That is right?

Q. Laredo, or San Antonio, that is correct, isn't it?

A. That is correct.

Q. And if you are going to get a school board in Benavides, and going to get men over 21, or 35 or 40, your age, you had to get people like you all were, isn't that correct?

A. That is correct.

Q. Now, do you know whether or not other people like Mr. George Parr, also attended meetings occasionally, once or twice a year, when the school board was meeting? Did other citizens come occasionally?

A. There were some that used to go and ask for a job as a bus driver or janitor. They used to go there.

Q. As a matter of fact, the meetings were open and the public was invited to hear and discuss any of the problems

over which you sat as overseers and trustees of the board, isn't that true?

A. I don't remember inviting the public there, but the door was open for the public there.

Q. I did not mean extending invitations, or phoning them to come, but at any rate there was an implied invitation in that the door was open, and anyone who came was received and permitted to speak, isn't that true?

A. Yes.

Q. And isn't it true other people asked you to give various people jobs from time to time, other than George Parr?

A. Yes, sir.

Q. Who were some of these other people?

A. Well, I remember that there is a girl who used to work in the office. I don't remember her name. Hilda. She went there and talked to me, and Reynaldo Chapa, he went there and talked to me. There is a few others I don't remember.

Q. You did not think those people were attempting to tell you what to do, but only asking you to help their friends, or themselves, isn't that true?

A. That is right.

Q. And isn't that exactly the spirit in which George B. Parr appeared and asked you and the way those other people, Mr. Parr appeared and recommended people one or two times a year?

Mr. Wilkey: I object to the question or speech on the grounds it calls for a conclusion as to what various people did or thought they way they did it, and the manner—

The Court: In the same way and the same spirit. I think it does call for a conclusion. We want to elicit facts, and the jury is to draw the conclusions.

Q. Have you ever taken orders from anybody on what to do whatsoever? Have you, Mr. Barton?

A. No.

Q. Did you ever take orders from George Parr on what to do?

A. None.

Q. And would you have paid any more attention to George Parr's request to name somebody bus driver or teacher than you would Reynaldo Chapa, or some other citizen of that community?

A. Well, I guess about the same.

Q. About the same, and any taxpayer — did George Parr own property in the Benavides Independent School District?

A. He got some royalties there. I think he got some royalty. I'm not very sure.

Q. Now, Mr. Barton, in the year —

A. Oh, yes, he got some land too. Now I remember.

Q. In the intervening time from 1949 until he finished school, O. P. Carrillo finished the university at St. Mary's Law School and commences his practice in Benavides, was there any other licensed lawyer living in the town of Benavides?

A. No, sir.

Q. Now, do you recall testifying a moment ago that to your best judgment it was 1953 when Mr. O. P. Carrillo was employed by the board, when you voted on his employment? Could that have been 1952?

A. I was the one that made the motion to hire him, but I'm not sure it was 1952 or 1953.

Q. Then it could have been 1952, as far as you recall?

A. I don't know.

Q. All right. And do you know — was it or not when he graduated, just before or just after he graduated from St. Mary's Law School in San Antonio that you made the motion to hire him as school board attorney?

A. Yes, sir, just a little after.

Q. Sir? What was the answer?

A. A little after he finished the school, that he went to a meeting, and I was the one that made the motion there to hire him to help us straighten the books there.

Q. Help you straighten the books out?

A. Yes.

Q. Isn't it true, Mr. Barton, up to that time and for the last 20 or 30 years, there had been no delinquent taxes collected by the BISD?

A. No.

Q. You say you don't know, or —

A. I don't know. I am not sure of that.

Q. Do you know whether or not, as well as attorney for the board, O. P. Carrillo was employed to make an abstract of the records of ownership, and set up a set of books for the purpose of collecting delinquent taxes?

A. I guess so, but that night we hired him, you know, that is when Diego quit, you see, and so I wanted to make the motion to hire him because I know that Oscar Carrillo, he didn't know how, and I don't think nobody from there knew at that time.

Q. You don't think —

A. How to run that business. Diego was the only one.

Q. We are going into some detail about Diego. By Diego, you mean Heras?

A. That is right.

Q. Isn't that the Diego you have reference to, or Diego Navajar?

A. No, Diego Heras.

Q. And he was the only one you say knew anything about the books of the BISD?

A. To keep the books. He was the only one I know that knows, and when we was there, out of the whole bunch of the school board members, he was the only one that knew how to because I remember one night he quit, or something happened that, I believe it was Oscar Carrillo told me or somtbody, to go ahead and get him back. There was something wrong there, that they didn't know.

Q. That they didn't know?

A. How to fix, or something. I thought about getting somebody from San Diego, and the tax collector from San Diego.

Q. I know what you are saying, but you are talking so rapidly they may not. You say somebody, the tax collector from San Diego, somebody?

A. Blondy.

Q. You mean Blondy Barrera? Tell them who he is, so they will know who you are talking about.

A. School collector from San Diego.

Q. The tax collector for the San Diego Independent School District, the same job Mr. Chapa normally held for the BISD?

Mr. Wilkey: I object to the characterization as "normally held."

The Court: Sustained.

Q. Blondy Barrera had the same title with the San Diego Independent School District, with offices in San Diego, that D. C. Chapa had with reference to the Benavides Independent School District is your testimony, isn't it?

A. Yes, sir.

Q. And you say Diego Heras had quit, and Octavil Saenz asked you to ask him to come back, and you suggested to try to get Blondy Barrera?

A. I'm not sure it was Octavio Saenz. It was one of the members. I don't remember which one it was, but right away I thought of going to get Blondy Barrera from San Diego, and then I saw Diego, and I told Diego, "You better go back. Go back and work there."

Q. Did Diego do that?

A. He went back there a while, and then he was fired or quit.

Q. He went back for six months, didn't he?

A. No, two or three months, and then they move him, or he move himself. He put his office there at the Heras Drugstore, upstairs.

Q. And then it was two or three months, to fix the time of the original inquiry before the digress, as to when O. P. Carrillo was hired. You now fix it as about three months before Diego Heras left, quit, or went away for good; is that correct, sir?

A. You have got me all mixed up.

Q. The question originally, please, Mr. Barton, is when, in your best recollection, and please fix as best you can, the date of the employment of O. P. Carrillo as attorney for the board and as delinquent tax collector?

A. Well, I don't remember. I don't remember between 1952 to 1953.

Q. Do you remember when Diego Heras finally left the employment of the BISD?

A. I don't remember.

Q. Did Blondy Barrera live in the BISD?

A. No, sir.

Q. Then, after you made the motion, whenever you made it, to employ O. P. Carrillo, do you recall what his compensation was to be, or how he was to be compensated? I said after, but I mean at this time do you recall what the agreement was, at this time, if there was any as to compensation or how he was to be compensated?

A. We were going to pay him, I don't remember how much a month?

Q. Do you recall when the discussion with reference to the delinquent tax collections came up? Do you recall whether it came up at that time, before then, or subsequent to then?

A. I don't remember.

Q. Then you do not know whether or not you were present at the time any delinquent contract was awarded, delinquent tax contract was awarded O. P. Carrillo or not, do you?

A. I was not present.

Q. But you were present when he was employed as attorney for the board?

A. Yes, sir.

Q. And do you know subsequently there was filed with the county clerk, and with approval of the county attorney, a contract with the board, a contract between the board and O. P. Carrillo, under which O. P. Carrillo was to collect

the delinquent taxes, and set up a set of books so such could be done, you know that to be true, don't you?

A. I don't remember.

Q. All right. With reference to the insinuation in Mr. Bottler's question as to your voting to authorize Oscar Carrillo, Sr. to purchase gas and have it charged, his gas for his ranch, and have it charged to the School District, do you know whether or not Oscar Carrillo did that or not?

Mr. Wilkey: Your Honor, we object to defense counsel characterizing it as an insinuation, the question previously propounded. We request that defense counsel make factual inquiry of the witness.

Mr. Foreman: I will accept the apology of the prosecuting attorney, and a withdrawal of the word insinuation if he did not intend so to insinuate, Your Honor.

The Court: Very well.

Q. (By Mr. Foreman) With reference to the conversation as to between you and Oscar Carrillo, under which you asked to see the bank statement, you stated that was when he took over as secretary of the board or was named, appointed, or selected as secretary of the board of the BISD, did you not, sir?

A. I don't remember.

Q. Did you use those words a while ago, Mr. Barton, that it was about the time or after he took over, I think it was 1953?

A. 1952 or 1953, between those.

Q. All right. Was it at the time or a few months later, and if so, how many months later from the time Oscar Carrillo became secretary of the board of the BISD that you asked to see the bank statements?

A. I guess it was two or three months after. Oh, I don't remember when he first got in.

Q. You don't remember what?

A. When he first got in as school secretary, or two or three months after.

Q. What is your best recollection now as to the time Oscar Carrillo, Sr. did become secretary of the BISD Board of Trustees?

A. It is very hard to remember.

Q. I don't mean as to month or day, but as to year?

The Court: Isn't that a date that can be ascertained or stipulated?

Mr. Foreman: I don't know myself, Your Honor.

The Court: The witness doesn't know, and I think the Government would probably know. I think it could be easily ascertained and stipulated. The witness doesn't know.

Mr. Bottler: I am sure we could get together with counsel.

Mr. Foreman: Well, I am leading up. It is not the important part of the question anyway.

The Court: I was afraid we had spent a lot of time on it, and I was trying to avoid that.

Q. We will pass on.

Mr. Barton, where was this conversation between you and Oscar Carrillo, Sr. at which time you asked to be permitted to see the bank statements?

A. About eight o'clock there at the tax collector's office.

Q. And you say he showed you a yellow sheet of paper?

A. At the next meeting. Not when I asked him that night. He told me, "Well, I get it ready for the next meeting," so next meeting he show it to me, so I told him, I said I can't get nothing out of those.

Q. Well, did it have at the head of it, Texas State Bank of Alice?

A. Yes, sir.

Q. And did it have figures, tabulations showing the figures, checks withdrawn, the deposits made, and the balance on hand?

A. Yes, sir. They was a lot of figures there, but I didn't pay much attention.

Q. As a matter of fact, it would have been difficult for you to have audited or have gotten much out of the analysis of the bank statement, would it not?

A. I tell you one thing, I check my bank statements every month. I check those bank statements for the night club and ranch, I know how.

Q. Well, did you check those statements he gave you?

A. No, I didn't check.

Q. You just glanced at them and passed on?

A. Yes, sir.

Q. As far as you know, he had produced for your examination exactly that which you had requested, hadn't he?

A. Well, yes, sir.

Q. All right. Were there other members of the Board of Trustees there who had the opportunity?

A. No.

Q. Just you?

A. We was waiting. I was the first one to get there.

Q. All right. Did you ask him for any further information after he showed you those bank statements of the Texas State Bank of Alice?

A. No.

Q. Now, Mr. Barton, with reference to the statement a while ago volunteered by you in response to the answer of another question that Diego Heras was the only one, I believe you said, among the school board or at the office that knew anything about the books, isn't that true?

A. Well, he was the only one to know how to run them, and because D. C. Chapa, he didn't know. Oscar Carrillo, he was just getting in. He wouldn't know. He finished school, but he didn't have enough experience to run it, so Octavio, he just go to the meetings.

Octavio what?

A. He didn't use to go every day. He used to go and attend meetings, that is all, and I don't think the rest used to go either.

Q. By the rest, you mean C. G. Ramirez?

A. Right.

Q. J. G. Garza and yourself?

A. That is right.

Q. You don't think they attended meeting any more than you did, isn't that true?

A. I don't know.

Q. Well, do you think they did attend more than you did?

A. Well, yes, because there were a lot of times they used to call me, and I didn't used to go.

Q. And Diego Heras was, for many years, secretary of the board, acting tax assessor and collector for the Benavides Independent School District, office manager, and major domo of the Benavides Independent School District, wasn't he?

A. He was acting —

Mr.Bottler: Your Honor, we object. It is duplicitas. He has strung together a large number of questions. These call for a conclusion, at least with reference to some parts.

The Court: Yes, I think it should be broken down, and I don't know whether the witness knows what a major-domo is or not. The Court doesn't.

Mr. Foreman: The Court doesn't?

The Court: No, the Court does not.

Mr. Foreman: Well, I'm not sure I do.

The Court: I hope I am not requested to define that for the jury.

Q. (By Mr. Foreman) Tell us in your own words whether or not Diego Heras was the whole cheese?

Mr. Wilkey: Your Honor, that obviously calls for a conclusion. It is facetious rather than factual.

The Court: Yes, it does, and objection sustained.

Q. All right. I will rephrase it. Tell the jury as regards the books of the Benavides Independent School District, the making to the tax rolls, the sending out of the statements, the collection of the taxes, the depositing of the money, the writing of the checks, and any other office functions of the BISD, as to what function this Diego Heras had during the time from 1949 until his departure, whenever he did leave?

Mr. Bottler: We believe the question should be broken down, Your Honor.

The Court: Well, the witness may answer the question if he can. I don't know whether he can or not.

Q. Do you know what —

The Court: Can you answer the question?

A. Well, I don't know if Diego used to collect taxes or not. I know he used to write the checks when he was in San Diego. I don't know what in Benavides.

The Court: I think it would be more satisfactory if you directed the questions one at a time.

Mr. Bottler: Excuse me. I didn't hear the last part of the witness' answer.

A. He asked me too many questions at the same time.

The Court: I will ask the reporter to read back the last of the witness' answer.

The Official Reporter (Reading): "I know he used to write the checks when he was in San Diego. I don't know what in Benavides."

Q. Mr. Barton, did Diego Heras make up the tax roll?

A. Yes, sir.

Mr. Wilkey: May we have the time defined under that question, Your Honor.

Q. Define the time? Mr. Barton, do you have any fa-

miliarity with the Benavides Independent School District books before you went on the board in either 1948 or 1949?

A. No.

Mr. Wilkey: If the Court please, I raise an objection to the question unless the time is defined as to when Mr. Heras made up the tax roll, and I don't believe that has been answered yet.

Mr. Foreman: I am undertaking to do it now.

The Court: I think counsel is leading up to it.

Mr. Foreman: That is exactly right.

The Court: If not, I will let Government counsel explore on redirect examination.

Mr. Wilkey: I would have just asked one question.

Q. (By Mr. Foreman) And in 1949, where were the books being kept, in San Diego or in Benavides?

A. In San Diego.

Q. Do you know where the Parr Building is located?

A. Yes.

Q. In San Diego?

A. Yes.

Q. Where is the Parr Building located with reference to the county court house?

A. It is at the east side of the court house.

Q. And is it on the court house lawn, or across the street?

A. Across the street.

Q. Would you tell us whether or not it is a building approximately 100 feet by approximately 40 or 50 feet, facing the court house on the east side, facing west?

A. Yes, about 45 to 50 feet.

The Court: Do I understand the Parr Building is east of the court house?

The Witness: Yes, the east side from the court house.

The Court: Wouldn't that be out of the county?

Q. (By Mr. Foreman) The county line is how far from the court house, toward Jim Wells County? How far is it to the county line from the court house, geographically, to your best judgment?

A. I don't know where is the line. I guess about 150 feet from the court house, or a little more because there is the houses. There is some houses there across the street in the other county. The sheriff used to live there, and he still lives there.

Q. The Court asks, and I am asking also, how far would you go from a point on the highway to, I guess it would be, the north door of the court house, to the county line on the road to Alice, that is the Jim Wells-Duval County line?

A. About 300, 350 feet.

Q. Would you be going west then?

A. You say that is from the front door of the George Parr office to the line?

Q. No, I said the court house, the north door of the court house, the one facing the main highway, from that point on the highway, in this imaginary line in the center of the door east extending in the court house, how far would you go toward Alice before you would

get to the Jim Wells County line?

A. About 300-over 300.

Q. Three hundred or more feet or yards?

A. Yards. I will say 300 is a block. No, about 450.

Q. About a block and a half?

A. Yes, about a block and a half.

Q. Then, Mr. Barton, would you be going—wouldn't you be going east when you went to Alice?

A. No, you wouldn't.

Q. You would be going west?

Mr. Wilkey: Your Honor, I renew my request to fix the time as to when Mr. Heras kept the books, during what year or years did he mean Mr. Heras made the tax rolls of Benavides.

The Court: I am assuming counsel will do that, if he doesn't, you may explore on redirect examination.

Mr. Foreman: I am merely trying to establish something. I am a little mixed up on directions too.

The Court: Alice is east of San Diego. The Court takes judicial notice of that, and I will so instruct the jury.

Q. That is what I am trying to establish. With Alice being east, tell the jury what direction the Parr Building is from the court house? Is it still east, or is it west?

A. No, it is west.

Q. And it faces east, is what you meant?

A. It faces west.

Q. The Parr Building faces the court house, does it not?

A. Right.

Q. And the Parr Building is west of the court house, therefore the Parr Building, it faces east, would it not?

A. That is right.

Q. Now, who is Willie Benson, Mr. Barton?

A. He was bookkeeper there in San Diego.

Q. He is a certified public accountant, is he not?

A. Yes, sir.

Q. And state what connection he had, if any, with the books of the BISD from the time you went on the board until about the time you went off?

A. He was a bookkeeper there.

Q. He was the auditor and office manager, was he not?

A. That is right.

Q. And was he not also a public practitioner of accountancy? Did he not have a general accounting business with a large number of clients?

A. Yes, sir.

A. Yes, sir.

Q. Do you know whether or not the books of the Benavides Independent School District, the tax rolls and the tax receipts, the canceled checks, vouchers, and so forth were kept in Mr. Willie Benson's offices in the Parr Building at San Diego from the time you became a member of the board until sometime, whenever he ceased being, or some time after he seased being auditor and general manager of the board?

A. I don't know. I know the books were there. I don't know about the checks.

Q. Who was the person who did the actual work on the rolls and the books from the time you went on the board in 1949 until the books were moved back to Benavides?

A. Benson.

Q. Now, did Benson continue the entire time? Was there anyone under Benson?

A. There was a lady that used to work there with Diego.

Q. By Diego, you mean Diego Heras?

A. And another lady worked there.

Q. Admitting the supervision and general managership of Willie Benson, tell the jury what you know about the actual work done by this Diego Heras?

A. Well, he was working under Benson there.

Q. I understand. Now, what did he do, sir?

A. Make the rolls there.

Q. By rolls, you mean the tax rolls?

A. Yes, sir.

Q. For the Benavides Independent School District?

A. That is right.

Q. And what else?

A. I don't know what else.

Q. Did he fill out statements?

A. I guess so.

Q. And do you know whether or not he collected the checks at the post office?

A. I don't know about that.

Q. Do you know whether or not he and Mr. Benson wrote and countersigned the checks, and he went and Diego Heras went to the bank to get the money?

A. I don't know.

Q. Where did you all hold your meetings from 1949 until the books were moved back? Did you hold them in San Diego or in Benavides?

A. In Benavides.

Q. In what office?

A. The tax collector's office.

Q. Then there was actually a building known as the tax collector's office in Benavides all of this time from 1949 until the books were moved back from San Diego?

A. Yes.

Q. And what, other than meetings of the board, was that building used for?

A. That is all.

Q. Just for the meeting of the board?

A. Yes, sir.

Q. Was there or not a skeleton crew maintained there at Benavides, to-wit—was there a C. L. Olivero and Verlon Olivero, now Bridges, and a Hilda Chapa? Did they stay at that office in Benavides while Diego and Mr. Benson ran the business from San Diego?

A. Yes.

Q. Did not actual citizens, the local people, as distinguished from oil interests and royalty owners, did the local people appear there in the office in Benavides to pay their taxes during those years?

A. I don't know.

Q. Did you pay yours there?

A. I used to pay them in San Diego.

Q. Pay them to whom, Diego Heras.

A. To Diego or that lady that used to work for Benson. After they move the records to Benavides, I start paying them there, but when they was in San Diego, I used to go to San Diego.

Q. You would get your statements at Benavides, and travel to San Diego to pay your taxes?

A. Yes.

Q. As far as you know, was that the practice of other

members of the school board and other citizens, ranchers, and so forth, in Benavides?

A. Yes, sir.

Q. Mr. Barton, what type education did Diego Heras have?

A. I don't know. I say that he didn't finish the school at eighth grade.

Q. Did he go to a business course?

A. No.

Q. Sir?

A. No.

Q. He never took a business course?

A. Not that I know of.

Q. Did he ever study correspondence?

A. Not that I know of.

Q. Was he a well-educated man or not?

A. Well, he is pretty smart but—

Q. Was he smart with figures as well as business machines, adding machines, and typewriters?

A. He is pretty smart.

The Court: Are we near the end of cross examination?

Mr. Foreman: No, I don't think so, Your Honor.

The Court: I would suggest recess at this time. The Court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Q. (By Mr. Foreman) Mr. Barton, what is the state of this Simon Elizondo's health, the nightwatchman of the Benavides Independent School District? Is he in good health or bad health?

A. Bad.

Q. And how long has that condition continued?

A. I guess for the last five years, that I know of.

Q. And it may have been longer than that, might it not?

A. It may have been longer.

Q. Isn't it true that both physically and mentally he is handicapped?

Mr. Wilkey: Your Honor, I object to the form of the question. At this point, he is going into matters not gone into on direct.

Mr. Foreman: We are asking about Simon Elizondo. That is where I made the note. That is where I got the inference.

The Court: It was covered on direct examination.

Mr. Wilkey: Your Honor, I believe I am in error. I withdraw the objection. We did go into it on direct.

Q. (By Mr. Foreman) Isn't his handicap, his illness, both mental and physical?

A. That is what I heard.

Q. Hasn't he, from time to time, been confined because of his mental condition?

A. Yes.

Q. And isn't it true that from time to time he has absented himself from his post of duty at night without anybody knowing it, isn't that true? Wasn't that true several years ago?

A. I don't know. I would know that.

Q. All right, sir. Now, Mr. Barton, isn't it true that the Board of Trustees of the Benavides Independent School District, as such, functioned as a board to the best of its ability all of the time that you were on the board from 1949 until you retired in February of 1954?

Mr. Bottler: That calls for a conclusion, obviously. We object.

Q. Did you all function as a unit? Did you all each have work assigned you, special work, or did you all work together, in the general policy of the board?

A. We would work together.

Q. You would make a motion, somebody else would second it, they would vote on it, then somebody else would make a motion and it would be seconded, and you would vote on it, and then somebody else would make a motion, it would be seconded, and you would vote on that?

A. Yes.

Q. Do you know of anything the other members of the board you served with from 1949 through 1953 did, approved, or agreed to do that you did not likewise agree, approve, condone and ratify?

A. No.

Q. As far as you know, you did what they did, they did what you did, isn't that true, as a board member?

A. That is not correct.

Q. Sir?

A. You say they used to do what I do?

Q. Yes, so far as the affairs of the school, the running of its business, the approval of pay rolls, the approval of tax rolls, anything they would do with the funds of the board, or the funds of the district?

A. Yes, sir.

Q. Will you tell this jury to what local political party or affiliation the three members, who sit here as defendants, belong, that is, Santiago Garcia, Jesus Garza, and Octavio Saenz? Were they or not Old Party or Parr Party people on February 10, 1954?

A. Yes, sir.

Q. And you, yourself, were you not a member of the Freedom Party on February 10, 1954?

A. Yes, sir.

Q. And how long had you been a Freedom Party member, please?

A. Now or before that?

Q. How long before February 10?

A. I guess about six months or a year.

Q. And you have been, at all times, since February 10?

A. Yes, sir.

Q. One of the active political workers and leaders in that party in Duval County?

A. I am not a leader.

Q. Just an active political member?

A. I just vote.

Q. If you were asked to select the three most active leaders of the Freedom Party in Duval County, you being another person than yourself and taking into consideration your innate modesty, who would you name conscientiously three such members, and leave out Richard

Barton and Donato Serna? Wouldn't you be among the three most active workers and leaders of that party in Duval County now?

A. There are a lot of them there, leaders there.

Q. Well, I thought—well, I will ask about Donato Serna. Is he not a leader?

A. I don't think so. He don't help any more.

Q. Sir?

A. He was a leader.

Q. Up until when?

A. Until he was appointed as county treasurer—I mean as auditor or—what is it? County auditor or county treasurer?

Q. Well, he was the first Freedom Party member to receive a political appointment after the revolution in February, 1954, in Duval County, was he not?

A. Yes.

Q. And he received the highest paying job to be accorded a Freedom Party member, didn't he. Donato Serna, didn't he get the highest paid job when there was a turnover down there in politics?

A. I don't know.

Q. You don't know what he makes as an auditor?

A. I don't know.

Q. All right. Well, now, you say he is not, but up to that time, he attended rallies, barbecues, made speeches, worked at the polls, hauled people to the polls to vote, did he not?

A. Yes, he made speeches, but he don't come to the meetings. When we have meetings in Benavides, the Freedom Party, he wouldn't be there in San Diego either.

Q. He has withdrawn from the active precinct level of workers in the party, and is at a policy making level

now, is he? I will go on. Did you yourself use your car to haul people to the polls, attend meetings where candidates of the Freedom Party were selected?

A. Well, I take some of my friends that don't have a car, go pick them up and take them with me.

Q. And when the party is deciding whom it will support, and what ticket, what individual for any given office it will support, do you attend such meetings?

A. Yes.

Q. Where are they customarily held, Mr. Barton?

A. The meetings?

Q. Yes, at which the Freedom Party selects candidates for various school districts or city offices, or county offices, or state offices? Where do you all meet?

A. Mendez Garage.

Q. Which?

A. Mendez Garage.

Q. Where is that located?

A. Right there in Benavides?

Q. Near the court house?

A. No, in Benavides. The court house is in San Diego.

Q. Is that true for the entire county, do they meet at Mendez Garage, or only for Benavides?

A. Sometimes for the whole county, and sometimes it is for the school board or city, we meet, the Benavides people meet there, but when countywide, they come from Freer and San Diego.

Q. Have you attended such meetings at the Vaello Lumber Company?

A. Yes.

Q. Have you seen Donato Serna there?

A. Not at the Vaello's.

Q. Only at the Mendez Garage?

A. At Mendez, yes.

Q. Donato Serna does not live in Benavides, does he?

A. No, but on the countywide meetings he go there.

Q. Has he not also attended the local Benavides meetings?

A. No.

Mr. Foreman: All right. I believe that is all. Thank you, Mr. Barton.

Mr. Bottler: No further questions.

The Court: Very well. You may step down.

Mr. Foreman: We have no objection to either the stipulation or the exhibits, Your Honor.

The Court: Very well, sir. Are they identified?

Mr. Foreman: They have numbers, Your Honor. They haven't been given to this young lady.

The Court: If they are to be read, I suggest be identified before read.

Mr. Bottler: The exhibits are identified, Your Honor. The stipulation is signed by counsel. Does it need a number?

The Court: If it is going to be introduced in evidence, I suggest it be numbered.

(Document tendered to the Clerk and marked Government's Exhibit 204.)

Mr. Bottler: Gentlemen of the Jury, I will read a stipulation entered into by counsel identified as Government's Exhibit 204.

"It is hereby stipulated by Government and all defendants that, one: On June 24, 1949, George B. Parr was apponited county judge. Two: On April 4, 1952, George B. Parr resigned as county judge. On the same date, George B. Parr was appointed sheriff of Duval County. Three: On September 30, 1952, George B. Parr resigned as sheriff of Duval County. Four: On September 30, 1952, Archer Parr was appointed sheriff of Duval County."

I will read now from Government's Exhibit 22, being a report—correction, being a statement filed with the Banking Commissioner of Texas, being an acceptance of directors of the Texas State Bank of Alice, of Alice, Texas. Reading from the photostat filed with the Banking Commission, January 10, 1949, Acceptance of Directors, Texas State Bank of Alice of Alice, Texas. To the President: We, whose names are signed below, being citizens of the United States and residents of the State of Texas, do, each for himself and not one for the other, accept the position of director of the Texas State Bank of Alice, Alice, Texas, and solemnly promise that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said bank; and that we will not violate or knowingly permit any officer, director or employee of the bank to violate any of the provisions of the Statutes of the State of Texas, under which the said bank has been organized; and each for himself states that he is the bona fide owner in his

own right and in his own name, of the number of shares of stock required by said statutes; and that the same is not hypothecated, nor in any way pledged as security for any loan or debt. We hereby, each one for himself, authorize the secretary of the board to enroll our names as directors of the—and it ends there. Signed Mrs. L. A. Parr, Lillian Parr Moffett, G. A. Parr, George B. Parr, and Atlee Parr. Sworn to and subscribed to by the above indicated signatures, reading from the same instrument, dated January 10, 1949.

Reading from a similar instrument dated January 9, 1950, I will omit the formal part and read the signatures.

Mr. Foreman: Will you indicate its number, please?

Mr. Bottler: This is Exhibit 22 likewise.

Mr. Foreman: Oh; go ahead.

Mr. Bottler: Reading the signatures, G. A. Parr, Jesus Oliveira, Mrs. L. A. Parr, Atlee Parr, Lillian Parr Moffett, George B. Parr, and Thelma D. Parr, directors.

Reading from the same Acceptance of Directors, the 9th day of January, 1951, omitting the formal parts, and the signatures read: G. A. Parr, Mrs. L. A. Parr, Lillian Parr Moffett, George B. Parr, Jesus Oliveira, Atlee Parr, and Thelma D. Parr, directors.

Reading from the one dated January 8, 1952, Acceptance of Directors of Texas State Bank of Alice, omitting the formal parts and reading the signatures, G. A. Parr, George B. Parr, Mrs. L. A. Parr, Lillian Parr Moffett, Atlee Parr, Thelma D. Parr, Jesus Oliveira, directors.

Reading from the one dated January 6, 1953, Acceptance of Directors of the Texas State Bank of Alice, Alice, Texas, omitting the formal parts and reading the signatures, Mrs. L. A. Parr, Lillian Parr Moffett, George B. Parr, Thelma D. Parr, Atlee Parr, G. A. Parr, Jesus Oliveira, directors.

Reading from the one dated January 28, 1954, Acceptance of Directors, Texas State Bank of Alice, Alice, Texas, omitting the formal parts, G. A. Parr, Jesus Oliveira, G. B. Parr, Lillian Parr Moffett, Mrs. A. Parr, Thelma D. Parr, Atlee Parr, directors.

Exhibit 23, being likewise a document filed with the State of Texas, Department of Banking, a copy of the Amendment to the Articles of Association, the Texas State Bank of Alice, Alice, Texas, certificate of increase of capital stock, amendment to Articles of Association, State of Texas, County of Jim Wells, we, the undersigned. George B. Parr, President, and B. F. Donald, Jr., Cashier, of the Texas State Bank of the City of Alice, State of Texas, hereby certify that at a meeting of the stockholders of the said Texas State Bank of Alice held on the 9th day of January, 1950, pursuant to the provisions of Article XII, Chapter 3, and Article II, Chapter 4 of the Texas Banking Code of 1943, a proposition was duly submitted to increase the capital stock of said Texas State Bank of Alice from $100,000 to $150,000; that upon said proposition the consent of the persons holding two-thirds amount in value of the stock of said Texas State Bank of Alice was given, viz: Five votes in favor of and no votes against it; and that therefore, the capital stock of said Texas State Bank of Alice is hereby increased from $100,000 to $150,000, and that said increase is actually subscribed and paid up in cash and the Articles of Association are amended as shown herein.

Texas State Bank of Alice by George B. Parr, President. Attested: B. F. Donald, Jr., Cashier.

George B. Parr, President, being duly sworn, said that the matters and things set forth in the above statement are true. Signed by George B. Parr, President. The 18th day of February, 1950. J. W. Roach notary public, Jim Wells County, Texas, and the following of the capital stock owned by the bank being, and the signatures indicate G. A. Parr, Atlee Parr, Jesus Oliveira, Mrs. Lillian A. Parr, Lillian Parr Moffett, George B. Parr, and Thelma D. Parr.

The Government calls as its next witness Carl Williams.

2-454 CARL WILLIAMS,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

2-455 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, sir?

A. Carl Williams.

Q. Where do you live, Mr. Williams?

A. Alice, Texas.

Q. And where do you work.

A. For the First State Bank of San Diego, in San Diego, Texas.

Q. When was the First State Bank of San Diego organized?

A. August 9, 1954.

Q. And is it a successor to a previous bank there?
A. It is.
Q. What was that previous bank?
A. The San Diego State Bank.
Q. Is the old bank, the San Diego State Bank, still in business and in San Diego?
A. In liquidation, yes, sir.
Q. Is it doing an active business?
A. I don't believe so, sir.
Q. How long have you been a banker, Mr. Williams?
A. Since 1934.
Q. Where were you then?
A. Raymondville, Texas.
Q. And where did you go from the Raymondville Bank?
A. To the Texas State Bank of Alice, Alice, Texas.
Q. And when was that? About what year?
A. 1939.
Q. How long were you there?
A. Until 1951.
Q. Were you there all the time from 1939 to 1951?
A. Except for military service, yes, sir.
Q. During what years was your military service?
A. 1942 to 1945.
Q. During the years 1949, 1950 and 1951 were you where?
A. With the Texas State Bank of Alice.
Q. What was your capacity?
A. Head teller.
Q. What were your duties as head teller?
A. Supervision of tellers, in charge of the vault, the cash in the vault.
Q. Did you perform the normal duties of a teller in the bank, in addition to being the head teller?

A. At times, yes.

Q. Did you operate out of the tellers' cages there?

A. Yes, sir.

Q. And you were in charge of the vault cash?

A. Yes, sir.

Q. What is the normal banking process, or what was the normal banking process during the years 1949, 1950, 1951 in regard to the cashing of checks at the Texas State Bank? What did the tellers do, for example, in the process of cashing a check?

A. The normal process, as I recall, was first to identify the bearer of the check, to determine whether the person drawing the check had sufficient funds, and to determine that the check was properly drawn, then to pay the cash on it.

Q. All right, sir. After you looked the check over and determined it was properly drawn, and paid the cash on it, what did you normally do with the check at the window there?

A. If we cashed it, it was stamped with a stamp and forwarded to the proof department.

Q. Did this teller's stamp bear a number?

A. Yes, sir.

Q. Was that the number of a particular cage or particular teller?

A. That is correct.

Q. Did it indicate out of which cage funds the check cashed had been obtained?

A. The teller's number, yes.

Q. All right, sir. Do you know a gentleman by the name of Diego Heras?

A. I do.

Q. Did you ever see him during the years 1949, 1950 and 1951?

A. Yes, sir.

Q. Where did you see him?

A. In the bank.

Q. The Texas State Bank of Alice?

A. Yes, sir.

Q. About how often? About how often did Mr. Heras, to your knowledge, come in the bank?

A. Oh, as I recall, maybe once or twice a month, maybe more often.

Q. And where did you see him in the bank?

A. In the lobby.

Q. To whom did he, to your knowledge, deal with there in the bank?

A. Various ones. I have waited on him.

Q. All right, sir. Did he deal with any of the officers of the bank?

A. Yes, sir.

Q. With whom?

A. The cashier.

Q. Who was that?

A. Mr. Donald.

Q. Mr. Tom Donold?

A. Yes, sir.

Q. Do you know Mr. Donald?

A. Yes, sir.

Q. Would you point him out to us here?

A. Yes, sir.

Q. Could you indicate which gentleman is Mr. Donald?

A. (Indicating.) The gentleman on the corner between Mr. Chapa—

Mr. Foreman: Stand up, Mr. Donald.

(Mr. Donald complied with counsel's request.)

Q. All right, sir. Is he the gentleman who was cashier of the bank in the year 1949, 1950 and 1951?

A. Yes, sir.

Q. What were the duties of the cashier of the bank at that time?

A. The general supervision of the internal operation of the bank, as well as loan officer.

Q. All right. Back to Mr. Diego Heras. In reference to him and Mr. Donald, when you saw them together, where would they be?

A. Usually at Mr. Donald's office.

Q. Where on the bank floor, at that time, was Mr. Donald's office in relation to the tellers' cages?

A. Immediate behind or at the far end from the entrance.

Q. Anyone coming in the front door going to Mr. Donald's office, would he or would he not pass in front of the tellers' cages?

A. He would, normally.

Q. Now, then, in dealing with Mr. Heras there at the teller's window, do you remember any occasion when you cashed checks for him?

A. Yes, sir.

Q. Do you remember any occasion when you cashed more than one check at a time for him?

A. Yes, sir.

Q. When you cashed more than one check at a time for him, on what account were these checks drawn?

A. Usually on the Benavides Independent School District.

Q. All right, sir. Now, about how many of these checks would there be?

A. As I recall, the number varied. Sometimes from a few to—

Mr. Foreman: Your Honor, I would like to fix this time as to when this happened, for the purpose of possible objection.

The Court: Very well.

Q. State, to the best of your recollection, about when you first cashed a bundle of checks, or when you first deal with Mr. Heras in regard to a bundle of checks?

A. The best of my recollection, it could have been the latter part of 1946, or perhaps the first part of 1947.

Q. All right.

Mr. Foreman: Just a minute. May it please the Court, we object to—

Mr. Wilkey: I have another question.

Mr. Foreman: I want to object to that, and ask that that answer be stricken. May it please the Court, the period of limitation would bar any acts, if any were wrongdoing, prior to August 31, 1951, which is going back some six years, and we ask that that testimony be excluded and that if—

The Court: You say six years. That would be six years from the date they returned the indictment?

Mr. Foreman: No, Your Honor, six years beyond the period of limitation. He says 1946, and this is 1951. This bars it, and he is talking about something that happened

in 1946, and therefore it is—the period of limitation for this indictment would go back, as I understand, to September 1, 1951, which was six years after the period of time he is now talking about and therefore the incident would be barred by limitation, if there were any wrongdoing in connection therewith, and we object to it on behalf of each of the defendants, and as to each count as to each defendant, and ask that it not be permitted, the jury be instructed not to consider that testimony at all, and that if it be admitted, that it be limited as to its purpose and as to the count and as to the defendant to which it is offered. In addition to these objections heretofore made as to all defendants except B. F. (Tom) Donald, and the Texas State Bank of Alice, we object as hearsay, because there has been no connection or showing, or even a suggestion that any of them had anything to do with it, and as to Mr. Santiago Garcia, we object to it that the was not even on the school board until October or November of 1953, according to the record, and until a direct connection with the counts has been established, should certainly, if overruled in its entirety and if not, be limited in its applicability as to count and individuals, then as to all of those with whom no connection has been shown, without naming them separately, we object to it as hearsay.

The Court: We have several objections on several grounds, and I want to consider them separately as to the question of hearsay. What says the Government? On the question of limitation what says the Government?

Mr. Wilkey: The question of limitation in relation to the scheme alleged in the first nineteen counts in relation

to conspiracy in Count 20, is prior to the conspiracy, if it is established the same scheme and practice continued, is admissible to show the scheme and practice, and I think my next question will put these things within the limitation of the indicatment, which merely states the period running the 1st of September, 1949.

The Court: His testimony is not admissible to conversations with Mr. Donald, but is it not conduct he observed between Mr. Donald and Mr. Heras?

Mr. Wilkey: Correct, Your Honor. We are offering the acts and observations of the witness as against all defendants on all counts because it is not hearsay, and in regard to conversations between Mr. Donald and the witness, we offer them as against Mr. Donald and against the Texas State Bank, of whom or of which Mr. Donald was cashier.

The Court: Would it have any application to the San Diego bank?

Mr. Wilkey: On the present state of the record I believe we should not offer it in regard to the San Dieago bank. We reserve the right to do so later, after it is connected up.

Mr. Foreman: Do I understand—I may have misunderstood the prosecuting attorney. Do I understand it is offered as to all counts as to all defendants, or to all counts and as to Mr. Donald and the bank?

The Court: I will overrule the objection, and the testimony is admissible. I will instruct the jury it will not be

considered as to any other defendants unless the testimony is connected up by their evidence.

Mr. Foreman: Does the Court mean by that the Court will make that instruction at the conclusion of the testimony, or the Court makes it now and leaves it to the jury whether it is connected up?

The Court: The Court is instructing the jury now the evidence is admissible, and will not be considered as to any defendants except Mr. Donald and the Alice Bank unless it is connected by other evidence with other defendants.

Q. (By Mr. Wilkey) Mr. Williams—

Mr. Foreman: May we, in an abundance of precaution, object that even if admissible at all or later, that no proper predicate has been laid for the admissibility of it at this time.

The Court: Objection overruled.

Q. (By Mr. Wilkey) Directing your attention to the year 1949, did you see Mr. Diego Heras in the bank that year?

Mr. Foreman: We object to that as leading and suggestive.

The Court: Did he see Mr. Heras in the bank in 1949?

Mr. Foreman: He directed his attention, in effect saying "this is what I want you to testify about, and did you see

him in that year." He suggests he wants the answer he did see him in that year.

The Court: It directs the subject of the inquiry, which is permissible. He is limiting his inquiry to 1949, and it does not suggest the answer, and the objection is overruled.

Q. You may answer, sir.

A. Yes.

Q. And did you see him during the year 1949 once or more than once in the bank there?

A. Numerous times.

Q. All right, and during the year 1949—

Mr. Foreman: If it please the Court, we will object to this also, 1949 or any period of the time up until September 1, 1951, for the same reason. It is remote, beyond the period of limitation, and my objection is as to each and all defendants and as to each and all counts.

The Court: Objection overruled.

Q. Do you recall any instance—

Mr. Foreman: We ask that the purpose for which it be offered be stated, and that it be limited to the purpose for which offered.

Mr. Wilkey: The purpose is the proof of the allegations made under all 20 counts of the indictment, Your Honor. This is the integral part of the scheme.

The Court: You may continue.

Mr. Wilkey: Would you read the question back?

The Official Reporter (Reading): "Do you recall any instance—" It was not quite finished, Mr. Wilkey.

Q. It was, do you recall any instance, do you recall any instance where Mr. Heras presented to you a bundle of Benavides Independent School checks at the tellers' cage window to be cashed?

A. I do.

Q. What occurred on that instance? Would you testify, in your own words, without relating any conversation?

A. Yes, sir. The bundle of checks was presented for cash payment. It was determined that they were not properly endorsed, and I asked the person who presented them to kindly endorse them, which he refused to do.

Q. Who was the person who presented them?

A. Mr. Heras.

Q. All right, sir. What do you mean by that, that they were not properly endorsed?

A. Mr. Heras did not endorse them.

Q. And he declined to do so?

A. Yes, sir.

Q. Were those checks made out to Mr. Heras as the payee?

A. No, sir.

Q. Who were they made out to?

A. Various persons.

Q. All right. After Mr. Heras declined to endorse these checks with his own name, what next occurred?

A. The matter was referred to Mr. Donald, the cashier.

Q. And then what occurred?

A. I was instructed to cash them.

Q. Who instructed you to cash them?

A. Mr. Donald.
Q. Did Mr. Heras endorse them?
A. No, sir.
Q. Did you cash those checks?
A. I did.
Q. On what account were those checks drawn?
A. The Benavides Independent School District.
Q. To whom did you give the money?
A. Mr. Heras.
Q. And in the processing of the checks, did you or did you not put your teller's stamp on them?
A. I did not.
Q. Did you have any conversation with Mr. Donald about this?
A. Yes, sir.
Q. What was the subject of the conversation? Give us the details of the conversation with Mr. Donald.

Mr. Foreman: Again we object to that as to anyone except Mr. Donald, may it please the Court, and ask that the jury be instructed not to consider it as to any other defendant.

Mr. Wilkey: As previously stated, we are offering this conversation as against Mr. Donald and the Texas State Bank, of which he was cashier.

The Court: It will be so received, and the jury is instructed to consider the conversation between this witness and Mr. Donald only insofar as it pertains to the case against Mr. Donald and the Alice bank, and not against any of the other defendants.

Mr. Foreman: It is my understanding it has been established this occurred in 1949; is that correct?

The Court: That is the testimony, yes, sir.

Mr. Foreman: Then we object to it also for remoteness as heretofore objected.

The Court: Objection overruled.

Q. (By Mr. Wilkey) As to this conversation and instruction from Mr. Donald, did you or did you not place your teller's stamp on these Benavides Independent School District checks?

A. I did not.

Q. Did you send them up—what did you do with the checks after you paid them, and did not put your teller's stamp on them?

A. Forwarded them in the usual manner to the proofing department.

Q. All right, sir. On any subsequent occasion, did you have occasion to cash bundles of Benavides Independent School District checks for Mr. Diego Heras?

A. I did.

Q. On those occasions, what practice did you follow in regard to putting on or not putting on the teller's stamp?

A. I did not put my teller's stamp on them.

Q. Was your teller's stamp an indication in the bank, in the usual practice, of the responsibility for the transaction incurred?

A. Normally, yes.

Q. Normally, in the practice of the bank, when you sent up checks inadvertently without any teller's stamp placed on them, what would happen upstairs?

A. They were returned.

Q. In the case of the Benavides Independent School District checks, can you recall anything that occurred in relation to them?

A. They were not returned.

Q. Did you ever have any—did you ever receive any instructions about that?

A. I don't recall any.

Q. Now, besides Mr. Heras, was there anybody else who ever presented any bundles of Benavides Independent School District checks to you for cash payment?

A. At times, Mr. Donald would present those to me.

Q. Mr. Donald himself?

A. Yes, sir.

Q. Now, at the times Mr. Donald himself presented those checks to you, did you have occasion to observe if there was anyone else in Mr. Donald's office?

A. Yes, sir.

Q. Was there anyone there?

A. Yes, sir.

Q. And who was the person?

A. Mr. Heras.

Q. I see. Did you, on any occasion, happen to observe what Mr. Donald did with the money you gave him in exchange for Benavides Independent School District checks?

A. No, sir.

Q. Besides Mr. Heras and Mr. Donald, were there ever prestned to you any checks of the Benavides Independent School District in bundles for cash payment?

A. I don't recall any.

Q. Now, during what period of time did the presentation of these checks in bundles occur? We have been asking about 1949. Now, then, did it occur in any other years besides 1949?

A. Yes, sir.

Q. What years?

A. As I recall, it started somewhere in the year 1947, 1948, 1949, and was continuing when I left the employ of the bank in 1951.

Q. When did you leave the employment of the bank?

A. October 1951.

Q. And where did you go then?

A. The Kleberg First National Bank in Kingsville.

Q. In what capacity?

A. Cashier.

Q. I show you what has been identified as Government's Exhibits 17-A, B, C, D, E, F, G, H, I, J, K, L, M, N, O and P. I will ask you to look at those, and I will ask you if you have ever seen any checks like those before?

A. I have.

Q. Where did you see those?

A. During my days as teller in the Texas State Bank.

Q. And those checks were checks drawn on which account?

A. The Benavides Independent School District Building 1950 Series Fund.

Q. Can you tell by looking at the perforation, or other banking stamps on them whether or not they were paid by the Texas Bank of Alice?

A. Yes, sir.

Q. Were these checks similar to those you cashed at your window there?

A. They were.

Mr. Foreman: I object as leading and suggestive.

The Court: Objection sustained.

Q. I ask you to look at the countersignature, the ones written across the side, and ask you do you recognize that signature?

A. I do.

Q. Whose signature is it?

A. G. B. Parr.

Q. Is that George B. Parr?

A. Yes, sir.

Q. Who was George B. Parr in relation to the Texas State Bank of Alice at the time you were working there?

A. As I recall, Mr. Parr was the president of the bank.

Q. Will you look through the other exhibits, besides A and so on, and look at the countersignatures?

Mr. Foreman: May it please the Court, it occurs to us the contents of the checks, the 17-A series, is being proved in evidence by verbal testimony without their being offered as such. I would like to interpose an objection at this time to the questioning. I would like to be permitted to examine the exhibits.

The Court: Very well, sir.

(Short interval.)

Mr. Foreman: May it please the Court, defendants and each of them respectfully object to any testimony with reference to the contents of these 16 checks purporting to be on the various accounts of the Benavides Independent School District and all drawn on the Texas State

Bank of Alice for the reason that the latest date of any one of these checks is beyond the period of limitation, in that such latest date of any such check is the date of June 20, 1951, and therefore would be barred by limitation. It commenced running in this case on September 1, 1951, and the introduction of either such checks, or the translating into the record of testimony of witnesses concerning them, would be in effect to attempt to jeopardize these defendants, and each of them, for an act beyond the period of limitation and barred by the period of limitation, and no one of these checks are described or read in the indictment, and for each of these reasons as to each defendant, we make that objection.

We make the further objection as to each of the defendants because periodically, from an examination of each of the 16 checks, they were not legally drawn in that only the name of Diego Heras appears as the maker or drawer of the voucher, and his name appears on the line of acting secretary and the president of the school board's name is omitted, which is a legal requisite to legally withdraw any funds in a depository.

Those are the two general objections. I will have another one legally—I mean, I have objections as to each defendant on hearsay, and if the Court prefers, I will make it now or wait until the Court rules on the first.

The Court: I would rather rule on these objections now. Objection overruled.

Mr. Foreman: Then we object to their being received in evidence generally.

The Court: Now, I want to make a statement at this time. You have objected several times on the limitation

question, to anything that may be received or dated or mentioned in evidence prior to September 1, 1951. Is that the cutoff date you are claiming?

Mr. Foreman: That is my understanding.

The Court: I would be willing to give you a running exception on that without stating it each time, in the interest of saving time.

Mr. Foreman: All right, sir.

The Court: Would you like to have that?

Mr. Foreman: I surely would. Furthermore, Your Honor, we want that running exception to include that we object to its being received for general purposes, and not being limited as to the purpose for which it is offered, and as to the counts for which it is offered.

The Court: When I say running exception, I mean you will not be required each time to except to any evidence that may bear a date or refer to a date prior to September 1, 1951.

Mr. Foreman: I understand that. That was the limitation period, but one of the other parts of that same objection was a request that evidence admitted over the general objection, that the further objection be considered that such evidence as to checks or vouchers prior to September 1, 1951 be limited to whatever purpose the prosecution claims and for whatever purpose the prosecution claims it offers any such vouchers and checks.

Heretofore, they have stated they were offering them generally as to all defendants on all counts, and I assume that will be their attitude throughout, and it would save us having to interrupt at all, if it might be understood in addition to our limitation period we had made the—

The Court: I don't know that I could make a general ruling on that. In this case, the first 19 counts charge scheme and artifice to defraud and Count 20 charges a conspiracy by all defendants. It may be the plan that it may be offered by checks, or testimony may relate to the general scheme or general conspiracy.

Mr. Foreman: That is why we ask that they be limited as to specific purpose and specific counts, because it is conceivable there might be one finding with reference to the first 19, and a different finding in relation to Count 20 and they would not be admissible in the event of a negative finding as to Count 20, yet they might already have been considered as to the substantive counts 1 through 19.

The Court: What says the Government?

Mr. Wilkey: Your Honor, up to now, I haven't even offered the checks yet. It is my intention to offer them generally on all counts against all defendants as part of the general scheme to defraud alleged in the first 19, and as part of the conspiracy to defraud alleged in 20.

The Court: I don't want to make any general commitments as to evidence that be received in the future, but I have stated you may have a running objection on your

limitation question, as you have stated that you are, and you have on a number of occasions, objected to testimony and exhibits which bear dates prior to September 1, 1951, and testimony as to acts and occurrences prior to September 1, 1951, and I have stated and I will state it will not be necessary for you each time to object on the statute of limitations, and that you will have a running objection, which you have stated several times, as to acts, occurrences, and instruments dated prior to September 1, 1951.

Mr. Foreman: I understand as to the statute of limitations. I need not object, but as to the request that such exhibits as antedate it be limited to specific counts and specific defendants, I understand it is the Court's desire I reiterate my objection each time.

The Court: Yes, I don't want to make a general ruling on that.

Mr. Foreman: I understand, Your Honor.

Mr. Wilkey: May I proceed?

The Court: You may.

Q. (By Mr. Wilkey) I believe in the last question, you had looked through each of these 19 checks at the countersignature. On Exhibits 17-B through P, whose countersignature appears on all these checks?

A. The signature of G. B. Parr.

Q. All right, sir. Now, then, who signed these checks in the place for the maker of a check at the bottom, where we normally sign checks?

A. Those checks were signed by Diego Heras.

Q. Are you familiar with his signature?

A. I am.

Q. Are you familiar with Mr. Parr's signature?

A. I am.

Q. Is that the same Diego Heras whom you have testified, with Mr. Donald, presented these checks to you for payment, for cash?

A. It is.

Q. I will ask you to look again through these checks, and, as a banker, tell us what, if any, which if any, of these bear a teller's cage stamp on them? Call off the exhibit numbers, if you will?

A. Exhibit 17-B does. Exhibit D. That is all.

Q. The others do not bear a teller's stamp?

A. They do not.

Mr. Foreman: All the others do not?

A. They do not.

Mr. Foreman: Go ahead.

Q. I will ask you if you know a Martin C. Urtado?

A. I do not believe so.

Q. By the way, how long have you been working in San Diego for the First State Bank of San Diego?

A. Since February of 1955.

Q. All right, and during the years '49 to '54, where were you working?

A. In Alice and Kingsville.

Q. Alice and Kingsville. State whether or not you have, as a person, and in your profession as a banker, a general acquaintance in the southwest area of Texas?

A. Generally, yes.

Q. Do you know an Alfredo L. Alcaraz?

A. No, sir.

Q. Do you know Leonardo J. Parras?

A. No, sir.

Q. Do you know Jose L. Mondragon?

A. No, sir.

Q. Do you know Arturo S. Licona?

A. No, sir.

Q. Do you know Pedro C. Medrano?

A. No, sir.

Q. Do you know Julian R. Toledano?

A. No, sir.

Q. Do you know Leandro G. Villanueva?

A. No.

Q. Ricardo M. Losoya?

A. No.

Q. Jose M. Altamirano?

A. No.

Q. Arcadio F. Gutierrez?

A. No, sir.

Q. Do you know Antonio T. Fernandez?

A. No, sir.

Q. Do you know Isidro S. Carmona?

A. No, sir.

Q. Do you know Juan R. Solomanca?

A. No, sir.

Q. Do you know—I have asked you Jose Mondragon. Herman S. Saldivar?

A. No, sir.

Q. A while ago, I asked if, by examination of these checks, you could tell whether or not they were cashed at

your bank. You said you could tell, and I didn't get to ask the next question, were these checks cashed at your bank, the Texas State Bank?

Mr. Foreman: I have no objection to the witness testifying what appears on the check, but stating a categorical fact, unless he cashed them, would be hearsay.

Mr. Wilkey: My next question will be, sir, how can he tell?

The Court: Very well.

Q. How can you tell?
A. By the perforation within the check itself.
Q. What is the perforation?
A. It is the check interstate number and the date that it was paid.
Q. All right, sir. Are checks processed and paid at the Texas State Bank of Alice, were they during the time you were there stamped with the number on these checks here?
A. They were.
Q. Do any of these checks bear any indication they were cashed anywhere else prior to the time they came to the Texas State Bank at Alice for payment?
A. No, sir.

Mr. Wilkey: Your Honor, we offer in evidence Government's Exhibits 17-A through P, numbered consecutively.

Mr. Sharpe: Your Honor please, we object to it, the admission into evidence of Government's Exhibits 17-A

through 17-P for all of the reasons heretofor stated by Mr. Foreman, and in addition for the reason that it is not shown that this witness was present when the checks were made or drawn, or that he has had the custody of them during the intervening period of time since the date, all these dates being in 1951, therefore these exhibits have not been authenticated particularly as to their custody in the intervening period.

The Court: Is the testimony of this witness that he cashed them?

Mr. Foreman: No, Your Honor. It is testified they were cashed at the bank, and he has told why.

The Court: Objection overruled, and Government's Exhibits 17-A through P are admitted in evidence.

Q. (By Mr. Wilkey) Now, referring to these bundles of checks on the Benavides Independent School District which you cashed for Mr. Heras and Mr. Donald, approximately in what amounts were these bundles totaled? Can you give us any figure as to what that amounted to as to totals?

A. As I recall, they varied for perhaps—

Mr. Foreman: May it please the Court, we ask that he fix times and places as to this inquiry.

Mr. Wilkey: I am asking from 1949 until he left in November of 1951.

Mr. Foreman: He didn't say he left in November, 1951. He said he left in October, as I recall.

The Witness: That is right.

Q. Excuse me. When did you leave in 1951?

A. October 31.

Q. All right. Until November, 1951.

The Court: Very well, sir. You may continue.

A. My answer is the same. They varied from perhaps a few hundred to several thousand.

Q. All right, sir. When they were presented to you, were the amounts already totaled up or not?

A. Normally, yes.

Q. Do you know who ran the totals on them?

A. The original totals, no. I always verified that total.

Q. Was there at any time ever an adding machine tape attached to the bundle?

A. Yes, sir.

Q. Do you know whether that tape was run in the bank or outside the bank?

A. No, sir, I do not.

Q. Do you know of any occasion when either Mr. Heras or Mr. Donald presented checks like this to any other teller in the bank?

A. I can't testify to that.

Q. Did you ever see Mr. Heras transacting business at any other cage besides the one you were servicing at the time?

A. Yes.

Q. Whose cage was that?

A. Mrs. Fitch.

Q. Do you remember any particular occasion when Mr. Heras was at Mrs. Fitch's cage?

A. Yes, sir.

Q. What was that occasion, if you remember it?

A. Yes, sir. It was to rectify an error Mrs. Fitch had made in counting out some currency to Mr. Heras.

Q. Did you see Mr. Heras when he came in the bank?

A. Yes, sir.

Q. What was his appearance?

A. Rather harried. Perturbed.

Q. When he came in the bank harried and perturbed, where did he go?

A. Mrs. Fitch's window.

Q. What took place?

A. Mrs. Fitch rectified the error for which he came.

Q. Do you know in what amount that was?

A. Only by hearsay.

Q. All right. We won't ask for hearsay. Do you recall whether or not, after that time Mr. Heras came in looking harried and perturbed and went to Mrs. Fitch's whether in the next day or so he returned to the bank to Mrs. Fitch?

A. Yes, sir.

Q. And on that occasion, do you know what took place?

A. Again, by hearsay only.

Q. Well, as a result of that visit, did any event occur which you remember yourself personally?

A. Yes, sir.

Q. What was that?

A. Mrs. Fitch offered me some candy which had been given to her.

Q. All right. Did you eat some?

A. Yes, sir.

Q. Did other employees of the bank do likewise?

Mr. Foreman: Your Honor, we object. Every question, of the last five questions, is the unsworn testimony of the district attorney. We object to the form of the question.

The Court: The other employees of the bank do likewise. Do you mean did the other employees eat some candy? I will sustain the objection to the form of the question. You may ask what the other employees did, if anything. I will sustain the objection.

Q. Do you know whether or not the other employees of the bank had the same opportunity you had to enjoy the candy?

A. Yes, sir.

Q. What did they do?

A. They ate some candy.

Q. Who were some of the other employees, some of the other tellers at the time you and Mrs. Fitch were tellers?

A. Mrs. Ray.

Q. What is her first name?

A. Mrs. Christine Ray.

Q. Anybody else?

A. And Miss Erma Stanford.

Q. Now, then, — one moment, Your Honor. Mr. Williams, leaving the subject of these checks and going to the deposits made in the bank, do you recall any deposits made in various Benavides Independent School District accounts? Do you recall deposits made in the various Benavides Independent School District accounts?

A. Oh, yes.

Q. During the years 1949, 1950 and 1951, when you were there, were those deposits in the form of checks, or cash or what?

A. Well, I recall numerous deposits of checks.

Q. Do you recall any cash being deposited to the Benavides Independent School District accounts?

A. Not specifically, no, sir.

Q. Now, then, in regard to the normal banking practice there, when a deposit is made on a deposit slip then in use by the Texas State Bank of Alice, was there a place for a separate listing of checks, cash, and currency?

A. There was.

Q. In the normal practice of the bank, how would the checks be listed?

A. As a total.

Q. All right, and was it customary or not to attach an adding machine tape to that?

A. It was.

Q. All right. Now, would the cash and the checks be included in one total, or would they be itemized separately on the face of the deposit slip?

Mr. Foreman: May it please the Court, I have no objection to what this man did, he was a teller there, but as to the practice of any other teller, it is hearsay and he was simply one of the tellers now and then working in a teller's cage. I believe it can be established there were five or six other tellers in five or six other cages. As to his practice I have no objection, but as to the others it would be a conclusion of Mr. Williams.

The Court: What the practice of other tellers is may or may not be hearsay. The bank may have had a uniform policy which may have been discussed. This man may have been designated to supervise others. I don't know.

Mr. Foreman: May I have him on voir dire to establish?

The Court: You may.

Q. (By Mr. Foreman) Mr. Williams, during the period testified about, did you operate at one particular cage, say No. 1?

A. No, sir.

Q. Where did you operate?

A. No. 3.

Q. And how many such cages were there?

A. Three.

Q. And were there other tellers in the other cages?

A. Yes, sir.

Q. And was there any printed rule or regulation directing what or when or what particular practice should be followed, any accepted rule on deposits?

A. No printed rule.

Q. Was there any directed or established policy you recall?

A. It was a general practice.

Q. You do not recall discussing a general policy with the regular officers of the bank?

A. Yes.

Q. Which you yourself followed, being a skilful, trained, skilled banker, isn't that true?

A. No, sir.

Q. You do not know or undertake to say what practice any of the other tellers followed in that regard?

A. My duties concern only my own operation.

Q. Your own operation?

A. Yes.

Mr. Foreman: In that connection, Your Honor, we renew our objection.

The Court: Objection sustained.

2-490 DIRECT EXAMINATION (CONTINUED)

Q. (By Mr. Wilkey) Mr. William, who was head teller during the years 1949, 1950 and 1951?

A. I was.

Q. What were your duties in regard to the supervision of the tellers' cages?

A. During most of the time, I had to double as a teller myself, and to establish my own cage as well as the general supervision of the other tellers.

Q. You had general supervision of the other tellers?

A. Yes.

Q. To whom did the other tellers come in regard to the practice to be followed in their cages, in regard to the handling of money, checks, and so on?

A. For the special instructions, they usually came to me. For any policy, they went to an official of the bank.

Q. In regard to the handling, oh, of the itemizing or not itemizing of cash and checks on deposit slips of the bank, I ask you first in regard to your practice. What was your practice in that regard?

A. My practice was to itemize the currence as one item, the silver or coin as another item, and to list the checks, if more than the normal amount.

Q. In other words you listed the checks by each separate check?

A. No, sir, pardon me. I didn't finish. You list the checks as a total, with a complete total at the bottom of the ticket.

Q. All right, sir. Now, then, do you know what the practice was as followed by the other two cages during the time you were head teller? I am asking if you know.

A. My recollection is that they were the same.

Q. All right, sir. Now, then, after a deposit is made with, say, cash and checks, what happens to it in the processing in the bank?

A. It is forwarded to the proof department?

Q. All right. If the cash were not itemized, if it were all lumped in as one total of checks and cash, would that sufficiently inform the proof department of the status of cash in the teller's cages?

A. No, sir.

Q. Would it cause questions in the proof department?

A. Yes, sir.

Q. Does each teller have to account for all cash taken in during the day?

A. Yes.

Q. If the cash were not itemized on deposits which actually contained cash, would that cause the proof department to ask questions of that teller's cage to get the correct figures?

A. It is necessary for the tellers to make a cash ticket for any cash received or paid out or to be included with the deposit.

Mr. Wilkey: All right. No further questions, Your Honor.

The Court: It is now 10 minutes to 5:00. Is the cross examination calculated to be lengthy or not?

Mr. Foreman: Fairly lengthy, Your Honor.

The Court: Very well. Court will adjourn until tomorrow morning. The jury is reminded of the instructions previously given. Court is adjourned until 9:30 tomorrow morning.

2-493 MORNING SESSION—May 9, 1957

The Court: Be seated, please.

Mr. Wilkey: May it please the Court, we ask permission to recall Mr. Carl Williams to clarify a couple of points pointed out after recess yesterday.

2-493 CARL WILLIAMS,

being the witness who was on the stand at the time court recessed on May 8, 1957, resumed the stand at this time, and continued his testimony as follows:

2-493 DIRECT EXAMINATION, (CONTINUED)

Q. (By Mr. Wilkey) Mr. Williams, when was the approximate date of your conversation with Mr. Tom Donald in regard to a bundle of Benavides Independent School District checks which Mr. Heras declined to endorse?

A. As I recall the first conversation, and the only conversation I had with Mr. Donald, it took place in the year 1947.

Q. Had bundles of Benavides Independent School District checks ever been presented to you in that fashion prior to this?

A. I don't recall any.

Q. After this conversation with Mr. Donald, were they subsequently presented to you?

A. Yes, sir.

Q. At about what intervals?

A. Once or twice a month.

Q. During what period of time?

A. Until I left the bank.

Q. In what year?

A. 1951.

Q. In any conversation with Mr. Donald, was the use of your teller's stamp ever mentioned by either one of you?

A. It was.

Q. And what conversation was that, sir?

A. The first.

Q. And what was the nature of that conversation with Mr. Donald?

A. I declined — I asked permission to decline to use my stamp on such checks cashed.

Q. And what did Mr. Donald say?

A. He granted the permission.

Q. And subsequent to that time, what practice did you follow in regard to the Benavides Independent School District checks and the teller's stamp?

A. I followed his instructions, that I did not stamp such checks.

Mr. Wilkey: No further questions.

2-495 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Williams, as I recall your reference originally, in your reference to the conversation, it was about the year 1946. Can you tell us whether or not it was in 1946 or 1947?

A. No, sir, I cannot.

Q. Then it might have been even as early as 1946?

A. Possibly.

Q. Now, with reference to the teller's stamp, what if any — what is the reference to the banking regulation that requires all banks to use teller's stamps?

A. I know of no such regulation that it be used by all banks.

Q. Well, is there any law with reference thereto, whether it is a regulation of the Banking Department or not?

A. I know of none.

Q. As a matter of fact, there are many banks that don't even use teller's stamps?

A. Possibly.

Q. Even in your own experience, have you worked in banks that did not use teller's stamps at all?

A. Yes, sir.

Q. And where?

A. My own bank now.

Q. In the San Diego State Bank?

A. Yes, sir.

Q. How many tellers do you have?

A. I have two.

Q. And besides — you are vice president and executive officer of that, are you not?

A. That is correct.

Q. And in addition to that bank, you have worked in other banks that had the same policy, have you not?

A. Yes, sir.

Q. Where?

A. The Raymondville State Bank.

Q. And where else have you worked where teller's stamps were not placed on checks?

A. That is all.

Q. How many tellers do you have at the present bank, Mr. Williams, the First State Bank of San Diego?

A. Two.

Q. And do other people act as tellers from time to time by way of relief, special employment, alternating on holidays, vacations, or lunch hours?

A. Yes.

Q. As a matter of fact, that occurred at the First State Bank in Alice?

A. Yes.

Q. As a matter of fact, how many tellers were there at the First State Bank of Alice, as tellers, and then we will go into the other divisions of the bank?

A. There were three paying and receiving tellers and one note teller.

Q. What were the paying and receiving tellers' names?

A. Mrs. Ray and Mrs. Stanford.

Q. Do you know Mrs. Ray's first name?

A. Mrs. Christine Ray.

Q. And Mrs. Stanford?

A. Miss Erma Stanford.

Q. I or E?

A. E.

Q. E-r-m-a?

A. Yes.

Q. The next?

A. Miss Edna Fitch.

Q. Was that true the entire time from 1946 through the fall of 1951, or did others from time to time act — I am sorry — as paying and receiving tellers as distinguished from the bookkeeping department, acting as tellers?

A. No, sir.

Q. There were others in there during that time?

A. Yes, sir.

Q. Would you give us their names, please?

A. I am unable to recall all of them. I can give you part of them.

Q. As best you can. I realize the passage of time would erase the recollection of any of us.

A. I believe a Mr. Peterson at one time was a teller.

Q. Do you know his first name?

A. Raymond Peterson. Miss Sue Capps.

Q. That is C-a-p-p-s?

A. Right. That is all I can recall offhand.

Q. Sir?

A. That is all I can recall offhand.

Q. All right. Now, with reference to vacation period, lunch, there was always somebody at the teller's window, even though the teller himself or herself was ill, on vacation, or otherwise, out for lunch, or something of that sort?

A. Yes, sir.

Q. And when that did occur, where did the substitute teller come from?

A. Usually that was my duty.

Q. Well, assuming — was there also other employees that would alternate as tellers on special occasions?

A. Yes.

Q. From what department did they come?

A. Well, I believe we used the stenographer in that capacity.

Q. All right, sir, and what was his or her name?

A. Her name was Mamie.

Q. Groseclose?

A. Yes.

Q. Did any of the bookkeepers act as such?

A. I don't recall any ever having done so.

Q. Do you know whether they did or not?

A. Not to the best of my recollection.

Q. Mr. Williams, with reference to the one and only conversation you had with Mr. B. F. Donald back in either 1946 or 1947 with reference to a batch of checks drawn on the Texas State Bank of Alice, ostensibly on the account of the Benavides Independent School District, do you recall the payee of any of those checks?

A. No, sir.

Q. Do you recall the amount or amounts of any of those checks?

A. No, sir.

Q. Do you recall the signatures on the face of the checks, either as to countersignature or as to the makers of the check?

A. No, sir.

Q. You don't recall how they were signed, or whether they were signed by the then president of the school board and the secretary of the board or not, do you?

A. No, sir.

Q. You simply recall an instance of not requiring an endorsement, that is all that you do recall, of the man presenting the checks, to-wit Diego Heras, is that correct?

A. No, sir.

Q. Well, as to the check itself or the checks, I don't mean as to any conversations, but is that not true, that is all you remember with reference to the checks?

A. That was the only conversation involved.

Q. Of course, and I am not questioning or suggesting you should remember. I am simply establishing whether or not you do recall any other identify of that particular batch of checks?

A. No, sir.

Q. Now, you know or not the Benavides—tell us with

reference to the other accounts in the account when they —assuming the Benavides Independent School District bank account possibly in the fall or early winter or winter, what would be the relative place in the amount of money carried as cash deposit in your bank, that is the Texas State Bank of Alice, in the name of the Benavides Independent School District in relation to the other accounts of the bank, were they or not one of the large depositors?

A. Your question is were they the largest, or among the largest?

Q. Yes, sir.

A. I would say yes, sir.

Q. And I think—their offices were in another county, in Duval County, as heretofore testified, were they not, sir?

A. That is my understanding.

Q. Do you know whether or not the first batch of checks that was presented to you in 1946 or 1947 were checks that had been given to people to whom they were payable and cashed at the offices out of tax funds in Duval County, and later brought over and deposited and run through your bank as a bookkeeping policy? Do you know whether that is true or not?

Mr. Wilkey: I object to the question as multiplicitous and confusing. I can't tell myself what the witness is called upon to answer.

The Court: It is do you know this, do you know that, or something else. I suggest you break it down and ask one thing at a time.

Q. (By Mr. Foreman) Have you not, in your practice as

a banker and your experience as a banker, known people who would deposit their own check that they had cashed so as to have a record and a bank record of the checks having cleared, having been issued and paid?

A. Yes, sir.

Q. Is there anything unusual about that occurring in certain businesses?

A. No, sir.

Q. Then, in that regard, do you know whether these checks that were so presented and made payable to someone else, and which Diego Heras did not endorse, were such checks?

A. I do not.

Q. You do not know whether they were authorized debts of the school paid, that had been paid, and the man got his cash from the board, that had not been deposited?

A. I would not know.

Q. Thank you. Then that was, and the only time, I believe you stated, you ever had such a conversation with this defendant?

A. That is correct.

Q. Did you ever have any conversation with George B. Parr about not requiring endorsements?

A. No, sir.

Q. Did you ever have any such conversation with Gibbons A. Parr?

A. No, sir.

Q. Who was or is Gibbons A. Parr?

A. Mr. Gibbons A. Parr was the active or executive vice president of the bank at the time I was employed there.

Q. He had the same position with reference to the policy and directing of the affairs of the bank you now have with the First State Bank of San Diego?

A. Basically, yes.

Q. And where did George B. Parr—did he have a regular office in the First State Bank of Alice?

A. I know of none, no, sir.

Q. As a matter of fact, he was only there a few minutes once a week, wasn't he?

A. Once or twice a week.

Q. And when he did come, sometimes he wouldn't stay over 10 or 15 or 30 minutes, isn't that true?

A. At times, yes, sir.

Q. George B. Parr was a businessman with many different business interests, was he not?

A. That is my understanding, yes, sir.

Q. Among other things, he had two automobile agencies, did he not, or an interest in them?

A. I understand he has. I have no definite knowledge.

Q. And numerous other interests, ranching, oil, and mercantile establishments, radio stations, truck lines, and other similar industries, did he not?

A. I understand he had interests in them.

Q. As a matter of fact, he was one of the busiest men—

Mr. Wilkey: Excuse me. Complete your question.

Mr. Foreman: Do you want me to finish the question?

Mr. Wilkey: I wanted to object to this, which is evidenced by the last two, defense counsel is going into matters not brought out from this witness on direct examination. I believe it is permissible to do so, but not in the form of leading questions. I ask that he rephrase his questioning along that line.

Mr. Foreman: May it please the Court, I do not think, except for such rule as the prosecuting attorney suggests here, I know of no rule of evidence that when a Government's witness is offered, that even on new matter he cannot be led. I could be wrong, and I would rather have the Court's opinion of that than my own, but at least in my limited trial experience it is unknown. I think this witness on new material not inquired into by prosecution, I should be permitted to lead the witness.

The Court: That is not the rule as I understand it. The rule, as I understand it, is that this witness is called as a Government witness, the Government examines him and elicited certain testimony from him, then the defendant is entitled to cross examine the witness on matters which were covered in his direct testimony. It will be the policy of the Court to extend a broad interpretation to that, however, when you go into new matters not brought out on direct examination, then you are making a defense witness of this witness, which it was the announced policy of the Court that you could do. You did do that, to some degree, in the case of the witness Vaello, however, I will permit you to ask a leading question relative to Mr. Parr's business activities with the bank. I will not construe that as being defensive material because I believe his connection with the bank was brought out on direct examination, that he was an officer of the bank, so I will permit you to explore his activities as an officer of the bank by leading questions. It will be the policy of the Court that if you use a witness, and want to elicit from a witness testimony concerning matters not touched on by direct examination, then you make him your witness.

Mr. Foreman: I will not be permitted to lead him in such case?

The Court: That is correct. I will permit you to ask leading questions concerning his activities at the bank, and I will extend that broadly to his business activties.

Mr. Foreman: I appreciate it, and I shall do my best not to violate that ruling, and if I do it will not be intentional however, in the absence of any experience with reference to this point, we, of course, to the extent of experience being right, except to that interpretation of the rules, because I do not know it one way or the other.

The Court: It is the well-established practice in Federal Courts.

Mr. Foreman: All right, sir.

Q. Now, Mr. Williams, what other interests than those enumerated, business activities, was the defendant George B. Parr engaged in during the period of time, or interested in so as to require a portion of his attention other than the ones outlined heretofore in my questions and your answers?

A. I can recall no others to my personal knowledge.

Q. All right, sir. Was or not Gibbons A. Parr the executive officer of the bank usually at or in the bank?

A. Yes, sir.

Q. And where was his office or desk with reference to your usual place of employment?

A. He was at the front of the bank. He had an office or desk at the front, in front, in line with the teller's cages.

Q. The bank faced on a street or highway, which one?

A. I believe we called it Main Street, Highway 44, I believe.

Q. And what direction did it face?

A. South.

Q. And Mr. Gibbons A. Parr's desk then would have been east or west of this teller's cage?

A. It would have been south.

Q. It faced south? It would have been out in front of the teller's cage?

A. In line with them, yes, sir.

Q. But south of the cages?

A. Yes, sir.

Q. And how did the tellers' cages face?

A. The teller faced east in his teller work.

Q. Well, then, I understand that. In other words, the tellers' cages did not face the street?

A. No, sir.

Q. And entering the bank, the first desk we would pass would be Mr. Gibbons A. Parr?

A. That is correct.

Q. And you would go all the way past all of the tellers to get to the cashier's office?

A. Yes.

Q. It would be north of the tellers' cages?

A. Yes.

Q. And yours was the first cage?

A. The third cage.

Q. You were next, then, to the cashier's cage?

A. Next to the note teller's cage.

Q. The note teller was between you and the cashier?

A. That is correct.

Q. Who was the note teller?

A. Mr. Reed Nunley.

Q. Mr. Williams, who was in charge of the bookkeeping department?

A. Miss Mayfield.

Q. And her first name?

A. Miss Jewell Mayfield.

Q. And how many employees were in that office, generally, from 1946 until you left in the fall of 1951?

A. I would hazard a guess at about 13 or 14.

Q. And where was the money, how was the money kept, the money that each day—was it put in a vault?

A. Yes, sir.

Q. Was all of the money taken out of the vault each day and put in the tellers' cages, or left in the vault?

A. No, sir.

Q. Was any money put in the tellers' cages each day?

A. Yes.

Q. How much?

A. Enough to operate on.

Q. The same amount in each cage?

A. Not necessarily.

Q. Would it be different amounts each day?

A. Yes.

Q. It would vary from what amount to what amount, to start each day's business?

A. Eight to ten thousand dollars.

Q. In each cage, or divided between them?

A. Each cage.

Q. And the balance would be in the safe?

A. Yes.

Q. And who had access to that safe where the money was? Who had the combination to the vault?

A. I had it.
Q. Anyone else?
A. I believe Mr. Donald did.
Q. Anyone else?
A. Perhaps Mr. Nunley had. I don't recall.
Q. Do you know whether Gibbons A. Parr had?
A. No, sir.
Q. You don't know?
A. No, sir.
Q. Do you know whether George B. Parr had?
A. No, sir.
Q. You do not know?
A. No, sir.
Q. Do you know whether Jewell Mayfield had?
A. No, sir.
Q. You do not know, is that your answer?
A. That is correct.
Q. Thank you, sir. Now—may I see the indictment?

(Tendered to counsel.)

Do you know whether that Jewell Mayfield is the same person named here in Count 20 of the indictment as one of the alleged conspirators to steal the funds of the Benavides Independent School District—and Jewell Mayfield and Diego Heras, named as co-conspirators, but not indicted herein. Is that the same person you don't know whether she had access to the money or not?

A. Is the question—clarify the question.

Q. Was there more than one Jewel Mayfield in the bank?

A. No, sir.

Q. All right. Now, as head of the bookkeeping department, was this Jewell—what were Jewell Mayfield's duties?

A. As I recall, she had general supervision of all bookkeepers, the general books of the bank, and the individual ledgers of the bank.

Q. Including the ledger of the Benavides Independent School District?

A. Yes, sir.

Q. Then, if Jewell Mayfield did have access to the accounts of the Benavides Independent School District, and if she, perchance, had access to the funds of the bank, and if she did, as the Government says in Count 20, conspire with Diego Heras to misapply the funds of the Benavides Independent School District, tell us whether or not there was anything in the practice of the bank that would have prevented her inserting any given number of Benavides Independent School District vouchers as a debit item to the Benavides Independent School District account, and appropriating any funds of the bank and thereby keeping the funds in balance. Would there be anything to prevent that?

Mr. Wilkey: Your Honor, that is speculative, calls for a conclusion, and is based on certain premises which I don't think are in the record.

The Court: Well, I will hear the witness answer, if he can.

Q. Just tell us, sir, whether or not, assuming from your testimony you do not know whether or not Jewell Mayfield had the combination and access to the cash of the bank, but do know she had access to the account of the Benavides Independent School District, would there have been any irregularity in the bookkeeping of the

bank at the Texas State Bank of Alice if a debit was shown to account for any money missing? In other words, would there have been any necessity for clearing through some teller, such as you, Miss Christine Ray, Miss Stanford, Mrs. Fitch, or any other substitute teller? Could the same thing have been done without going through you tellers?

Mr. Wilkey: Which question is the witness to answer? I think there are two and possibly three.

The Court: If the witness can understand it, I will hear him answer it.

Q. Are you confused, Mr. Williams?

A. Rather, yes.

Q. This is assuming someone wanted to steal funds of the bank. This is a hypothetical question. I am not asking did anyone do it, but a possible conjecture, circumstantial evidence matter, a hypothetical question assuming a conspiracy, as alleged, but assuming further a conspiracy between Miss Mayfield and Diego Heras, and assuming Diego Heras presents and signs the check—

Mr. Wilkey: I object to this question, as also a previous question. He is basing it on an alleged conspiracy between Diego Heras and Jewell Mayfield. The indictment alleges a conspiracy between these two parties and the defendants. That is the allegation in the indictment, and what this case is based on.

The Court: Yes, the assumption is on matters not now in the evidence. The assumption is on an allegation in

the indictment, and if you are to assume an allegation, I suggest the whole allegation be assumed.

Mr. Foreman: May it please the Court, I do not accept the State's theory of this case, and as the Court knows, a conspiracy between any two people would be a conspiracy, whether a conspiracy between all or not.

The Court: Very well. I will permit the question.

Q. Now, Mr. Williams, assuming a conspiracy solely between Miss Mayfield and Diego Heras, and Diego Heras had access to the checks of the Benavides Independent School District, and that he and Jewell Mayfield, and they alone, desired to steal funds of the bank and charging it to the account of the Benavides Independent School District, would it have been necessary, in order for them to have accomplished the subject of that conspiracy, to have gone through the process of depositing the money, writing a check, presenting it to a teller, who perhaps was not a part of the conspiracy, and then sending the check on back to the same Jewell Mayfield to be charged to the account of the Benavides Independent School District? Could not the money, if Miss Mayfield desired, could not Diego Heras have given her the checks, could she not have, in the policy of no teller's stamp, have charged it out of the Benavides Independent School District upon which the check was drawn, and if she did have access to the funds of the bank in the vault, could she not therefrom extracted the amount of the checks so cherged, and avoided the possibility of discovery or detection by such tellers as yourself?

Mr. Wilkey: Your Honor, if the witness can answer it, all right, but that is an argumentative question. It states theories and an argument. It is not a factual question at all.

The Court: I will permit the question.

Q. (By Mr. Foreman) Isn't that true?

A. I will try to answer your question. It is entirely possible that such a thing could have happened, although the vault of the bank was equipped with a timing device, and in all probability such a possibility would have had to have occurred during banking hours when rather rigid supervision was maintained over the vault cash.

Q. Yes, sir.

A. Further, all cash in the vault had to be strictly accounted for without—and any withdrawal by Miss Mayfield, or any other teller, had to be noted. It is entirely possible that Miss Mayfield could have debited, as you say, the Benavides Independent School District accounts, but would have had to offset it with a like amount of credits, or taken the money from the vault.

Q. Now, you have answered it, have you not?

A. I think so.

Q. Now, Mr. Williams, let's carry this hypothetical conjecture one step further. Let's suppose B. F. (Tom) Donald was a party to that theoretical or hypothetical conspiracy. First I will ask you a few preliminary questions, and that is, how often do you actually count the money in the vault?

A. Normally about—there are two ways of counting money in the vault, by bundles and then by checking each bundle individually.

Q. I will say by bundles. I am not going to ask you to count each bill individually.

A. Each day.

Q. And who did that?

A. I did.

Q. At what time of day?

A. Immediately after closing time.

Q. Now, did anyone stay in the bank, in the vault rather, and charge out each bundle of currency to any given teller, or to you, or whoever came for it at the vault at a given teller's cage?

A. Usually No. 3 teller handled those duties.

Q. By that, you are—who was No. 3 teller?

A. I was, most of the time.

Q. And when you weren't, who was?

A. Mrs. Fitch.

Q. When you say usually, when the No. 3 teller did not, who did?

A. Myself. If I were not at the moment No. 3 teller, I handled it.

Q. If No. 3 teller was there, whoever was in the No. 3 cage would handle it?

A. Yes, sir.

Q. But if the No. 3 teller were absent and you happened to be there and in No. 1 cage, who handled it? Wait a minute: You were No. 2 cage?

A. No. 3.

Q. No. 3. You or whoever was there in your place would handle it?

A. Yes, sir.

Q. And if—now, would that be true, do you figure, any time you saw B. F. (Tom) Donald or Gibbons Parr go into the vault? Would you watch to see if they extracted any bundles of currency?

A. No, sir.

Q. Then, they could have—did other people, from time to time, go in the vault besides you as No. 3 teller?

A. Oh, yes.

Q. Did any of the tellers go in?

A. Yes.

Q. Did they go in there sometimes alone?

A. Yes, sir.

Q. And they would come out without anyone having gone in while they were there?

A. That is right.

Q. Where, in this vault, was the money kept, Mr. Williams?

A. In the back of the vault. The vault cash was locked in a cement-encased safe.

Q. By vault cash, you mean currency as well as silver?

A. It was not silver. Currency only.

Q. The silver is kept loose? Who had the key to that safe?

A. It was a combination.

Q. Who had the combination?

A. I did, for one.

Q. Who else?

A. I believe Mr. Donald did.

Q. Anyone else?

A. Perhaps Mrs. Fitch.

Q. Anyone else?

A. I don't know of anyone else.

Q. You don't know that others didn't have it?

A. No, sir.

Q. You don't know that even the stenographer, Miss Groseclose, whether she had it?

A. No, sir.

Q. By the way, do you all have that combination written down in there so that anyone, if you forget it, would know where they could read it, on the wall or some place and operate the combination?

A. As I recall, such a record was kept in a safety deposit box.

Q. And do you know who had the access to the safety deposit vault?

A. Yes, sir.

Q. Who?

A. Mr. Donald and Mr. Nunley.

Q. Do you know who typed that combination up?

A. No, sir.

Q. Then you do not know whether, at the time it was typed up, it was placed elsewhere or not, or a copy kept thereof?

A. No, sir.

Q. Thank you. Then, assuming that Mr. B. F.—as a matter of fact, you don't know but what George B. Parr had a copy of that combination, do you?

A. I have no such knowledge.

Q. You have no knowledge either way?

A. No, sir.

Q. Then, carrying our hypothetical question, this being a circumstantial evidence case, one step further, tell us whether or not—

Mr. Wilkey: Your Honor, we object to the argument contained in the question as to this being a circumstantial evidence case. We have a different opinion.

Mr. Foreman: I will withdraw it.

To start over, Mr. Williams, assuming that Mr. B. F. (Tom) Donald and Miss Jewell Mayfield and Diego Heras, and they only, were in a conspiracy to steal money out from the Texas State Bank, or otherwise, that is otherwise from the Benavides Independent School District, would there have been anything to keep Mr. Heras from giving a check outside of the bank, on the streets at night, or anywhere else, to either Miss Jewell Mayfield or Mr. B. F. (Tom) Donald, and Miss Mayfield, pursuant to the conspiracy the Government alleges in Count 20, to enter a debit on the books of the Benavides Independent School District, and Mr. Donald to extract a like amount of money from the place that you have designated, and therefore would that keep the bank, would that balance the bank's books, and they to divide the money or to do whatever with it they might conclude was proper or improper, that they might desire to do, would there have been anything to have prevented the extraction of such funds? Would there have been anything that would keep the bank's books out of balance, if such were done?

A. Normally, there would have been a debit and a credit, as suggested by the question. Actually, it would have had to have been accounted for through the normal course of business, a payout-either from one of the vaults there, from the vault, or one of the teller's cages.

Q. Well, now, is there a permanent record of each teller, each teller's business kept separate from the general business of the bank?

A. Yes, sir.

Q. And where is it kept?

A. A daily teller's book.

Q. And how long?

A. Well, I don't know personally. I assume that it is kept permanently.

Q. When you say normally something would be done, normally there would be thieving done, would there, Mr. Williams?

A. That is correct.

Q. Well, then, what you are saying is that such would have been wrong, and would have been abnormal?

Mr. Wilkey: Argumentative, Your Honor. It is asking for conclusions, opinions.

The Court: Objection sustained.

Q. And could such have been done either normally or otherwise?

A. What was the original question?

Q. The original question about the extraction of the money from one account without going through the faldera! of presenting a check to a cashier or to a teller, could the money have been extracted that way, and the bank's books kept in balance?

A. No, no actual currency could have been actually extracted that way.

Q. All right. Well, could Mr. Donald, had he so desired, or George Parr, had he so desired, have gone into any given teller's cage at any time, any one of the three cages, and inserted therein checks and extracted therefrom money to to the actual amount of such checks, and thereby have kept the teller's books in order?

A. Yes, sir.

Q. In other words, all that was required of anyone of the three tellers was that at the end of the day they actually have the eight or ten or twelve thousand dollars with which they had started business, and any other cash received, and checks received, is that not true, Mr. Williams?

A. They are required to do that, yes.

Q. And that is all they are required to do, isn't it?

A. The normal duties of a teller, yes.

Q. Well, did or not occasionally that occur, some officer of the bank go to a teller's cage, and insert a check, and take cash?

A. That is correct.

Q. There is nothing unusual about that, even in the bank where you now work, is there?

A. No, sir.

Q. Or in the banks where you have heretofore worked?

A. Yes.

Q. And they do that themselves, extract money, place the checks in there without going around to the window and entering it as a customer?

A. They do. It is a dangerous practice.

Q. But nevertheless is a customary practice, isn't it?

A. Yes, sir.

Q. Now, carrying our hypotheticol case one step further, would it or not have been possible for Mr. Donald, had he so desired and had there been something surreptitious about a batch of checks, would there have been anything to have kept him from going to any one of these teller's windows and laying the check in there, and taking out the money? He could have done that, couldn't he?

A. He could have.

Q. I am asking this question, Mr. Williams, not with any insinuation against your honesty and integrity because I don't question it, but you were not a participant criminally, had no guilty knowledge, or did not intend to violate, or steal, or help anybody else steal any money at any time you were a teller in that bank?

A. No, sir.

Q. As far as you know now Miss Christine Ray, or Miss Erma Stanford had no such evil intent?

A. I know of no such intent.

Q. Then, assuming again a hypothetical question, and assuming that whoever did whatever was done with reference to the funds, either of the Texas State Bank or of the Benavides Independent School District, whoever this money belonged to, such a person, anticipating the possibility of detection, could have avoided the ultimate effects of his wrongdoing at least to the extent of having an honest witness against him by doing exactly what I said in the manner I suggested, could he not, Mr. Williams?

Mr. Bottler: Your Honor, the question is argumentative, calls for a conclusion, and invades the province of the jury. He assumes "whoever did whatever was done," I believe was the language of Mr. Foreman, and is impossible to answer, and we object for all of the reasons —

Mr. Foreman: It is anticipated by the defense, at least, that this case will be submitted on circumstantial evidence, and this is a circumstance that the jury has a right to consider.

The Court: It isn't a circumstance to be drawn from any of the evidence. It is argumentative, assuming facts not in evidence, is it not?

Mr. Foreman: Well, Your Honor —

The Court: It is assuming we are — are we going to have to consider all of the possible means of stealing money?

Mr. Foreman: I think in a circumstantial evidence case, I think the jury is required to go outside of the record, not just in the record, and assume any possibility or hypothesis. That is the question, any reasonable hypothesis except the defendant's guilt, is the way it reads, and this is a reasonable hypothesis suggested, and I think that we have a right as original evidence to suggest a reasonable hypothesis for the jury's consideration. I don't think there is any way to invade the province of the jury, if it were to be given that charge, and they are laymen, not working in banks, not knowing how the mechanics work, and having an expert banker on the stand, and as far as the leading and suggestive nature of the question, which has not been made but was probably in the Court's mind, in view of the Court's ruling, this is my witness, we suggest the hypothetical questions are exceptions to the leading and suggestive nature of the question rule.

The Court: I am aware of that rule.

Mr. Foreman: I knew the Court was.

The Court: I will hear the United States Attorney.

Mr. Wilkey: Your Honor, in the first place we consider that the testimony of this witness in regard to what he saw and heard with his own eyes, and hears and sees as

evidence of the checks, Exhibit 17-A through P, is direct evidence and cannot be characterized as anything but the most direct evidence. There may be circumstances which can be argued from, and we would agree if they arise, but we consider this certainly in part, at least, a direct evidence case of the most direct character. In regard to these possible hypotheses and what could have occurred, that seems to me a matter for argument, and that is one of the objections made by my co-counsel, that these questions are argumentative.

They are possibly part of the defense's argument, if he wants to make it. He can ask questions as to facts, what transpired, what the mechanism is, but it is up to argument of counsel to draw conclusions, not to ask a witness to draw conclusions as to what might have happened.

Mr. Foreman: May it please the Court, as I understand, the prosecuting attorney's suggestion is that while I can't prove it, I can argue it. It is my understanding I can only argue that which I have proved. I imagine if I started to argue something I could not prove —

The Court: I am not going to hold you strictly to that in your argument, Mr. Foreman.

Mr. Foreman: May it please the Court, the purpose of an expert witness, and a man familiar with the processes of the bank, is to enlighten the laymen who do not, and none of them have worked, in a bank as to a possible hypothesis upon which they could draw, and they could not otherwise except for testimony of such an expert as Mr. Williams know but what this hypothesis would be precluded.

The Court: I want to rule on the question. I am going to ask that the reporter read it back.

The Official Reporter (Reading): "I am asking this question, Mr. Williams, not with any insinuation against your honesty and integrity, because I don't question it, but you were not a participant criminally, had no guilty knowledge, or did not intend to violate, or steal, or help anybody else steal any money at any time you were a teller in that bank?"

"Answer: No, sir.

"Question: As far as you know now Miss Christine Ray, or Miss Erma Stanford had no such evil intent?

"Answer: I know of no such intent.

"Question: Then, assuming again a hypothetical question, and assuming that whoever did whatever was done with reference to the funds, either of the Texas State Bank or of the Benavides Independent School District, whoever this money belonged to, such a person, anticipating the possibility of detection, could have avoided the ultimate effect of his wrongdoing at least to the extent of having an honest witness against him by doing exactly what I said in the manner I suggested, could he not, Mr. Williams?"

The Court: Objection sustained.

Q. (By Mr. Foreman) Mr. Williams, do you know the names of these 13 or more bookkeepers, or any of them, that worked under co-conspirator Jewell Mayfield?

A. I know part of the names.

Q. Will you name such of them as you can?

A. Well, there was Mrs. Daniel, Mrs. - -

Q. Go ahead.

A. — a Mrs. McDonald.

Q. Do you know her first name?

A. Marie, I believe.

Q. All right, sir. Go ahead, sir.

Q. Mrs. Lee Snowden, are the only ones I can think of immediately.

Q. And some ten others?

A. Yes, sir.

Q. And it is your recollection that none of them ever alternated as tellers?

A. That is correct.

Q. Did you all have substitute tellers when the tellers went on vacation?

A. I usually filled in.

Q. Did anyone else ever fill in on vacation periods?

A. Mrs. Groseclose.

Q. Anyone else?

A. I can't recall any others.

Q. Now, Mr. Williams, do you recall anything at all about ever having seen Government's Exhibit 17-A and 15 other vouchers in evidence here, which were presented to you, until this — while you were in the bank at Alice?

A. I cannot say that I did.

Q. You did not cash those checks yourself, as far as you know?

A. As far as I know, I have — I can't answer that question. It is possible that I did.

Q. And your testimony as to their being cashed is based on their being perforated?

A. That is correct.

Q. Where was the perforation machine or machines?

A. In the bookkeeping department.

Q. They were not kept in the teller's window?

A. No, sir.

Q. Then, except for the two of these checks which bear a teller's stamp, there is no showing that any of them ever, as far as you know, were marked or identification of the bank is concerned ever appeared even at a teller's window, is there?

A. That is correct.

Q. And that is teller No. 3?

A. Yes, sir.

Q. You do not know whether you were there at that time, or whether someone else was there at that time?

A. Yes, sir.

Q. Were you the teller No. 3 in June of 1951?

A. Yes, sir.

Q. All the time, you were there?

A. Yes, sir.

Q. Did your duties ever change?

A. Yes, sir.

Q. When did your duties change with reference to your departure, I mean whether or not you were put on as assistant cashier or any other subsidiary function?

A. No, sir.

Q. You still operated at the post of teller No. 3 such time as you were there, until the June of 1951 when you went away?

A. I operated as relief teller and head teller or vault teller, and at such times as needed in cage 3, yes, sir.

Q. And then were you out of cage 3 more the last few months that you were there than you had been there the first several years?

A. No, sir, I was in cage 3 constantly the last few months I was there.

Q. Except for such time as you might be at lunch, and then it would be Mrs. Groseclose or someone else — anyone else?

A. Miss Groseclose, I believe, was the substitute teller.

Q. All right. Then with reference to these series of checks, there are none of them signed by the president of the school board, are there?

A. That is correct.

Q. And they all are endorsed by the payee, are they not, sir?

A. Yes, sir.

Q. And except — these endorsements at least appear to be different signatures, do they not, sir?

A. They do.

Q. Of different individuals, some 16 signatures, is that correct, sir? Sir?

A. A signature on each check. I believe that is the normal.

Q. You would not say that the person who wrote this check (indicating a document) for instance, likewise wrote this one, would you (indicating another document)?

Mr. Wilkey: Your Honor, we object to that as a conclusion, calling for expert testimony unless this gentleman can qulify as being familiar with the signatures and the names of these parties on the checks.

The Court: I think being a bank teller gives him some expert qualifications, the degree of which I don't know, but I will permit the testimony.

Q. (By Mr. Foreman) Thank you, Your Honor. Isn't it true, Mr. Williams, one of the duties of the teller is know, examine, be familiar with and compare with the signature card on file the—so as to determine the authenticity of an endorsement, isn't that correct?

A. That is part of the duties of a bank teller, to determine signatures, correct.

Q. And it is the third element that you described yesterday by which you appraise or decide whether or not to cash any given check, wasn't it?

A. Yes, sir.

Q. And you have done that many thousands of times, haven't you?

A. Possibly, yes, sir.

Q. And in—if you couldn't make that distinction or determination, you wouldn't be a very good teller, would you?

A. That is correct.

Q. Now, getting back to these—would you say the person who signed that check (indicating a document) signed that check (indicating another document)?

A. There is no similarity in the two signatures.

Q. And the answer is no, then?

A. Obviously.

Q. Isn't it true of all the signatures, that they all appear to be different signatures?

A. Yes, sir.

Q. And in your best judgment as an expert, would you say the same person didn't sign any two of these, wouldn't you?

A. Examining them hastily, I see no similarity between any two of them.

Q. The answer is you would not say as an expert any two persons signed any two of them?

A. On hasty examination, yes. The answer is yes.

Q. You have to be hasty each time you make one of these decisions, don't you?

A. Yes.

Q. And you are used to making hasty decisions on signatures, is that right? That is part of your work as a teller?

A. Yes, sir.

Q. With reference to your funds, these, or that were misapplied, either the Benavides Independent School District or the Texas State Bank of Alice, tell us whether or not any signature appears thereon, any of these checks on the place where the president of the school board is required by law to sign in order to make it a valid check?

Mr. Wilkey: Your Honor, that is not only repetitious, but calls for a conclusion and is a statement of Mr. Foreman's interpretation of the law.

The Court: I will sustain that. I will let the witness state what facts be observed from the checks.

Mr. Foreman: I will rephrase the question.

Tell us whether or not there is any one of these signed as a maker except by Diego Heras?

A. Mr. Diego Heras signed each of these checks as acting secretary.

Q. And is there any place at all where any signature at all on the line above acting secretary, where the law—pardon me, I shouldn't have said that—where the place is for the signature of the president?

A. In each case, the line designated president is blank and bears no signature.

Q. Mr. Williams—

The Court: Are we near the end of cross examination?

Mr. Foreman: No, sir, Your Honor.

The Court: I am going to suggest recess at this time. Court will recess 20 minutes.

(Short recess.)

The Court: Be seated, please.

Q. (By Mr. Foreman) Mr. Williams, what bank is now the depository of the Benavides Independent School District?

A. The First State Bank of San Diego.

Q. The one of which you are executive vice president?

A. That is correct.

Q. And when checks are now presented on the Benavides Independent School District, do you or not require the signature of the president and Board of Trustees?

A. I believe that is correct, yes, sir.

Q. Are you familiar with the statutes of the State of Texas that require such a signature in order to make a check a valid check on a depository bank?

Mr. Wilkey: Your Honor, the statutes would be the best evidence, and what is relevant and pertinent here in this case is what was done in the Texas State Bank of Alice.

The Court: I will let him answer if he is familiar with the statute.

A. I am vaguely familiar, yes, sir.

Q. You all have executed a bond, a depository bond, on the regular form provided by the Central Education Agency, have you not?

A. We have pledged certain securities, yes, sir.

The Court: Are you interrogating him now about the San Diego bank he is now with?

Mr. Foreman: Yes, Your Honor.

The Court: Is that material, what the school board has subsequently done, or what some other school board may do?

Mr. Foreman: No, sir. It is a preliminary question to the next question which is, do you pay the statutory or any interest on these balances. The Government having brought that out.

The Court: Very well.

Q. (By Mr. Foreman) Do you or not?

A. We do not.

Q. Mr. Williams, do you recall whether or not Diego Heras was in Southwest Texas, in the State of Texas, at any time from August 27, 1951 to November 4, 1951?

A. No, sir, I can't testify that I do.

Q. You do not recall having seen him at any time during that period of time?

A. I don't recall any such instance.

Q. Then you do not recall his having come into the Texas State Bank at Alice at any time between August 27, 1951, and the time of your leaving, October 31, 1951, do you?

A. No specific instance.

Q. Nor do you recall whether or not he came in at all during that particular period, do you?

A. No, sir.

Q. Now, Mr. Williams, do you know Willie Benson?

A. Mr. W. M. Benson?

Q. Yes. But before I get into that, I would like to ask you one or two other questions with reference to a hypothetical question. It is, assuming the hypothesis that co-conspirator Jewell Mayfield and co-conspirator Diego Heras, and they alone, entered into a conspiracy to extract and appropriate to themselves the funds of the Texas State Bank at Alice, and to have them charged by that bank to the Benavides Independent School District, and without coming to a teller's window at all, but at some other place in the county, or some other county, certain checks of and on the funds of the Benavides Independent School District were presented to Jewell Mayfield, and by her credited to some other account, a fictitious account, or even to Diego Heras' own account, and later withdrawn by checks upon that account, would that practice or procedure needs have had to clear through any teller in order for such funds to be so extracted?

Mr. Wilkey: Your Honor, we object just like we did to the previous question, to which our objection was sustained. This is something completely hypothetical, re-

mote from the indictment, argumentative, bears not on this case at all, and besides, I think the question is obscure and confusing, and the answer elicited would not be worth anything one way or the other, because of the way the question is phrased.

Mr. Foreman: I shall ascertain if the witness is confused. As to the other objection being sustained, just the opposite is my recollection.

The Court: It assumes facts not in evidence. Are we going into every possible means of stealing money or committing fraud?

Mr. Foreman: No, sir, Your Honor.

The Court: I don't think we have time to do that.

Mr. Foreman: I know it.

The Court: I think we ought to look into the particular allegations and charges in this case.

Mr. Foreman: But may it please the Court, if the evidence and testimony justify the submission of a circumstantial evidence charge, this could be a reasonable hypothesis, and it is in that thought and spirit that I suggested it, and I assure the Court it is my last suggestion.

The Court: Do you want to eliminate every reasonable hypothesis or include every other reasonable hypothesis?

Mr. Foreman: May it please the Court, it is the jury's duty, under the charge as I recall the circumstantial evi-

dence charge, to exclude every other reasonable hypothesis including this, if it appears to the jury it is reasonable.

The Court: Do you want to include in the evidence so as to include every other reasonable hypothesis?

Mr. Foreman: No, Your Honor, I don't intend to. I suggest there might be a thousand others.

The Court: And more, an infinite number of ways to steal money.

Mr. Foreman: I only want to go into the process of bookkeeping and safeguards provided by the bank, or the absence of them, which are ultimate facts about which I am now inquiring, and I am suggesting a hypothesis so as to determine whether or not there is any practice or procedure or safeguard.

The Court: Let's suppose there are no safeguards in the bookkeeping department. That would not in any way mitigate a crime, if there should be one, would it?

Mr. Foreman: Absolutely not, Your Honor, but I am trying to develop a record here by which the jury can measure the evidence in the light of the Court's charge, and the charge, among others, of circumstantial evidence.

The Court: I am anxious to develop such a record, and I don't believe this will do it, and I will sustain the objection.

Mr. Foreman: All right, sir.

Now, who is W. M. Benson?

A. Mr. Benson is a resident in Alice engaged in accounting.

Q. A general practice?

A. I assume so yes, sir.

Q. Will you tell us whether or not he was the cosigner of any of the checks of the Benavides Independent School District that you cashed from 1946, 1947 and up until into the year 1951?

A. He was.

Q. Was or not his signature on the most of such checks?

A. Up until, I believe it was, 1949, perhaps 1950.

Q. And then the checks that were first presented to you about which you testified in 1946 or 1947 would have necessarily been countersigned, according to that testimony, by W. M. Benson?

A. I believe that is correct.

Q. And what, if any, was W. M. Benson's connection with the Benavides Independent School Disrict, if you know?

A. It is my understanding he was the auditor for the District.

Q. Do you know whether he had any other functions?

A. No, sir.

Q. You do not know that he did not have?

A. I do not know.

Q. Now, with reference to this Diego Heras, whom you saw on frequent occasions—are we to understand he only came there to cash checks, or did he likewise come there to make deposits?

A. If I recall, he came there to transact various banking services or to make deposits himself.

Q. Well, did he not make the deposits for the Benavides Independent School District?

A. I believe that he did at times.

Q. Well, was he not the one who did most of the depositing for the Benavides Independent School District funds?

A. I don't remember.

Q. And was there any particular time of the year, Mr. Williams, that Mr. Heras would come more frequently than others?

A. I don't recall that there was.

Q. You do not recall that during tax paying time, September, October, November, December, that he would be there more frequently than other parts of the year?

A. I don't recall that he was.

Q. Do you recall that he was not?

A. No, sir.

Q. Then who else, during the period of time—do you know when the offices were moved, that is the offices of the Benavides Independent School District, from Mr. Benson's office in the Parr Building in San Diego back to Benavides? Do you know what year that occurred?

A. No, sir, I don't.

Q. Do you know whether it did occur or not?

A. No, sir.

Q. Then, was or not Diego Heras likewise a customer, meaning a borrower of the bank, a debtor of the bank? Did he have notes there?

A. I don't know.

Q. He did have a bank account of his own?

A. Yes.

Q. Mr. Williams, with reference to your acquaintance in Jim Wells County, I believe you—were your social

contacts, other than your work as a teller of the bank, were they primarily with persons of Latin descent or Anglo descent?

A. Usually Anglo.

Q. The chuch you attended was all Anglo, was it not?

A. That is correct.

Q. And any lodges, fraternal orders, or other organizations you belonged to, social clubs or luncheon clubs, were likewse Anglo, were they not?

A. Yes, sir.

Q. And you did not take part in any political campaigns so as to get out and move among the masses?

A. No, sir.

Q. Then, such acquaintanceship as you had with the identities of any people among the Latins largely would have been limited to the customers of the bank, would they not?

A. That is correct.

Q. And even those, you would be more familiar with their signatures than with their faces and forms, would you not, sir?

A. I try to associate the names and the faces, sir.

Q. Yes. Then, just—do you know—let me have Government's Exhibits 9 and 10.

(Documents tendered to counsel.)

Do you know a person in either Duval or Jim Wells County by the name of Hilberto Seguro?

A. No, sir.

Q. And do you know a person by the name of Alphonso Gonzales?

A. No, sir.

Mr. Wilkey: Your Honor, we ask that counsel identify which exhibit he is reading from.

Mr. Foreman: May it please the Court, I don't know—I am testing this man on his ability to know.

The Court: Yes, sir, you may proceed. You may ask him if he knows.

Mr. Wilkey: Then we object to counsel intimating to the jury he is reading from one of the lists when he is not.

Mr. Foreman: We object to counsel attempting to coach his witness by an ostensible objection.

The Court: Objection overruled.

Q. (By Mr. Foreman) Do you know a party either in Duval or Jim Wells County by the name of Ignacio Sanchez?

A. The name is not familiar to me.

Q. Do you know any such person by the name of Cosme Leal?

A. Yes, sir.

Q. You do know such a person. Do you know one by the name of Lorenzo Garcia?

A. No, sir.

Q. Do you know one by the name of Jose C. Lozano?

A. I don't think so.

Q. The mere fact that you do not know them, you would not undertake to say there is not such a person?

A. No, sir.

Q. And you would not know whether or not they are

actual witnesses subpoenaed now, waiting within 50 feet of where you are now seated?

A. That is correct.

Q. Now, Mr. Williams, with reference to the checks okayed as to being cashed in '46 or '47 by Mr. Donald which you heretofore testified about, suppose that check had not only not been endorsed by the person presenting it, but had not ever been signed by anybody at the place where the signatures were supposed to be made. Would you have cashed it?

A. If I had been instructed to do so, I would have.

Q. Were you ever so instructed?

A. I don't recall any such event.

Q. Do you recall having cashed any such checks with no signature at all as to the maker?

A. Not intentionally.

Q. You mean by that that sometimes you just inadvertently overlook whether there is a signature, and cash a check on a form, alone, without the signature?

A. It can happen.

Q. Has it happened in your experience?

A. Not to me personally, no, sir.

Q. But it has innocently happened many times with a big volume of business?

A. Yes.

Q. Even by people who thought they had signed it, and hadn't?

A. Yes, sir.

Q. Well, will you tell us whether or not you ever saw checks there at the bank, presented, with nothing except the countersignature of W. M. Benson or G. B. Parr, with

no signatures at all of the maker? Have you ever seen such checks, whether they were cashed or not?

A. No, sir.

Mr. Foreman: That is all from this witness, Your Honor.

2-548 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) What connection, if any, did W. M. Benson have, if any, with the Texas State Bank of Alice?

A. Merely as a customer, as I understand it.

Q. Was he at any time, while you were there, employed by the bank to your knowledge in any capacity?

A. I have no such knowledge, no, sir.

Q. In regard to Miss Jewell Mayfield, did her duties ever require her to handle cash in the vault?

A. No, sir.

Q. Did her duties as bookkeeper ever require her to handle cash in any substantial amount?

A. No, sir.

Q. Where was her office?

A. On the second floor.

Q. Where did the tellers work?

A. On the first floor.

Q. Where was generally the cash in the bank handled?

A. On the first floor.

Q. In the normal process of the bank there, when you were there, and in regard to your own personal process that you followed, what comparison did you make, if any, between the signature of the maker of a check, that is to say on the bottom here, with any other signature?

A. We compared it with the signature which we kept in our file on a signature card, either mentally or physically.

Q. Do you recall whether or not Diego Heras was an authorized signator for the Benavides Independent School District?

A. I believe that he was, yes, sir.

Q. In the course of business there in 1949, 1950, and 1951—

Mr. Foreman: May it please the Court, the law reuires an authorization on such matters, and we submit the authoization would be the best evidence as to whether or not the authorization was made by the Benavides Independent School District Board of Trustees, or by Diego Heras, itself.

The Court: I understand the question is for the purpose of developing the facts, and the objection is overruled.

Q. (By Mr. Wilkey) In the course of your business, or during the years 1949, 1950 and 1951, did you have presented to you for payment at the cashier's or at the teller's cage individual checks of the Benavides Independent School District drawn to various payees signed by Diego Heras as maker?

A. Yes, sir.

Q. Were these presented singly, individually, or in groups?

A. Both singly and in groups.

Q. Would persons who were paid, would any persons who were paid by the Benavides Independent School District for legitimate work, on occasion, come into the Texas State Bank of Alice to cash checks and deposit them?

A. They did.

Q. And were some of these checks, or those you recall, signed by Diego Heras as maker?

A. Yes, sir.

Q. Were they honored and paid by the bank in the normal course of business?

A. Yes, sir.

Q. During that same time, 1949 and 1950, were checks drawn to individual payees presented by individual payees at the bank and for legitimate purpose signed by either W. M. Benson as countersignator or George B. Parr as countersignator?

A. They were.

Q. Did you ever receive any instructions or any authority to honor the signature or countersignature of George B. Parr on Benavides Independent School District checks?

A. I did.

Mr. Foreman: May it please the Court, I would like to get the time and place of that.

Q. (By Mr. Wilkey) Can you fix the approximate time and place when these instructions were made known to you?

A. No, sir. They were made known to me verbally. I I don't recall the date.

Q. You can't fix approximately when?

A. It would be a guess.

Q. All right. We won't ask for guesses. In the normal practice there at the bank, if a check drawn on the Benavides Independent School District accounts had been countersigned by George B. Parr, would you have honored it?

A. Would you clarfy the question? Only if his signature only appeared on it?

Q. I am just asking if the check, a check made out, drawn on the Benavides Independent School District, and bearing the countersignature and with a signature in the place of the maker, had been presented, would you have honored it?

A. Yes, sir.

Mr. Foreman: Would you mind reading that question and answer back?

The Official Reporter (Reading): "Question: I am just asking if the check, a check made out, drawn on the Benavides Independent School District, and bearing the countersignature and with a signature in the place of the maker, had been presented, would you have honored it?

"Answer: Yes, sir."

Q. (By Mr. Wilkey) In accordance with your instructions and practice, if George B. Parr's signature were on the counter place, would it have mattered much to you exactly which was the name of the maker down here in that signature?

A. No, sir.

Q. What were your instructions and practice in that regard?

A. That no check was to be honored unless Mr. George B. Parr's countersignature appeared on the check.

Q. Now, then, if a check is presented to you there at the window, and you are not familiar—I am speaking of any check in normal banking practice, not necessarily Benavides Independent School District checks—if any

check is presented for payment, and you are not familiar with the name of the maker, what procedure do you follow?

A. Refer to the signature card in your file.

Q. What do you do when you refer to the signature card?

A. Compare the check.

Q. The card with the name of the maker signed?

A. Correct.

Q. In the case of a check drawn on your bank there, and endorsed by someone on the back, if such a check is presented to you for either deposit or cash, and you are not familiar with the name of the endorser on the back, what do you normally do?

A. Require some kind of identification.

Q. And what if the person presenting the check is well known to you as not being the person whose name appears as endorser on the check, what do you do then?

A. I have to require that the person presenting the check endorse it.

Q. Is that what you did in the case of Mr. Heras that you described yesterday?

Mr. Foreman: Your Honor, that is repetitious about which we did not go into.

The Court: Objection sustained.

Q. In regard to these endorsements on the back, I will try to avoid being repetitious, but I want to direct his attention, did you personally know any of these parties whose names appeared on the back?

Mr. Foreman: I object to that, may it please the Court, as repetitious. He has asked the same question and of each one of the names.

Mr. Wilkey: I did not want to be repetitious, but also did not want to be leading.

The Court: Repetitious as to this witness?

Mr. Foreman: He asked that when he had him on the stand yesterday.

Mr. Wilkey: I did, but I did not want to lead him.

The Court: Objection sustained.

Mr. Foreman: We object to it as leading, because he has already stated it was leading.

The Court: Objection sustained.

Q. (By Mr. Wilkey) In response to questions by Mr. Foreman here in regard to these signatures on the back, do you recognize those signatures as being the signatures of the parties whose names they purport to be?

A. I do not.

Q. Do you know the signatures of any of the names here on these checks?

A. No, sir.

Q. To the best of your recollection, referring to the time 1949, 1950 and 1951 when you were in the Texas State Bank of Alice, were any of these persons here depositors of the bank or had accounts there?

Mr. Foreman: May it please the Court, we object to the prosecuting attorney qualifying the witness' answer for him. The question would be the question, and he is attempting by suggestion that it might not be true, but to the best of his recollection and to that extent, it is leading and suggestive. He could ask a straight question.

The Court: I suggest it be rephrased.

Q. During the years 1949, 1950 and 1951, when you were in the Texas State Bank of Alice there, did these 16 parties whose names appear on the face of the check and whose names are written on the back, have accounts at the Texas State Bank of Alice?

A. I don't know.

Mr. Foreman: What is the answer?

A. I don't know.

Q. All right, sir. Did an account of any one of these ever come to your attention?

A. No, sir.

Q. All right. Now, then, in comparison of these signatures here, with reference to the questions asked you by Mr. Foreman, did you, in response to Mr. Foreman's questions, in any way attempt to testify that the signatures on the back here were written by the person whose name is on the face?

Mr. Foreman: May it please the Court, we object to the form of that question, as to what the man is attempting to do. I think he testified fairly forthrightly and honestly.

The Court: Objection sustained.

Q. (By Mr. Wilkey) All right, sir. Did you ever see any of these parties here whose names appear on the face of the check, like Martin C. Urtado, sign the back of this check?

A. No, sir.

Q. Do you have any knowledge that Martin C. Urtado was actually the person who signed Martin C. Urtado on the back?

A. No, sir.

Q. Do you have any knowledge that Alfredo L. Alcaraz, Exhibit 17-B, was actually the person who signed Alfredo L. Alcaraz on the back?

Mr. Foreman: He has already answered all of those once.

The Court: I think he has.

Mr. Wilkey: If he has, I will stop, having included all of em then.

A. Yes, sir.

Q. Now, with reference to Mr. Foreman's examination in regard to these signatures and—would it be possible for one or two men to write those various names on the back, and deliberately disguise the handwriting so that they appeared to be written somewhat differently?

Mr. Foreman: May it please the Court, we object to that as a duplicitas question, being approximately four questions in one. Also to going into the hypothesis. He objected to ours, and the Court sustained the exploration of a hypothesis, and it is not based upon—

The Court: I think your best objection would be it calls for a conclusion.

Mr. Foreman: We also interpose that as part of our objection.

Mr. Wilkey: Your Honor, I am asking for a conclusion on the very line of questioning which Mr. Foreman asked for and received a conclusion, based purely on this man's experience as a teller in the bank.

The Court: His expertness in signatures?

Mr. Wilkey: I am not saying he is an expert as a handwriting expert, but he has had great experience in signatures.

The Court: His aptness to whatever degree it goes as a bank teller, isn't that what you are basing it on?

Mr. Wilkey: Yes, Your Honor.

The Court: I will permit the question. I will permit the propounding of a hypothetical question to him bearing upon his expertness, to whatever degree he may be an expert, on handwriting.

Mr. Wilkey: Would you read it back please?

The Official Reporter (Reading): "Question: Now, with reference to Mr. Foreman's examination in regard to these signatures and—would it be possible for one or two men to write those various names on the back, and deliberately disguise the handwriting so that they appeared to be written somewhat differently?"

Q. (By Mr. Wilkey) You may answer it.

A. That is entirely possible.

Q. Does the use of a different size pen sometimes appear somewhat differently?

Mr. Foreman: I object as leading.

The Court: Objection sustained.

Q. What causes differences in appearances of signatures?

A. The pen used, the color of ink, the position from which the signature is written all tend to have a bearing upon the signature itself.

Q. Would differences be more pronounced if the intent of a writer were to disguise and make different one signature after another?

Mr. Foreman: I object to that as calling for a conclusion not within the field of which this man—

Mr. Wilkey: I withdraw the question, your Honor.

The Court: Very well.

Mr. Wilkey: No further questions, Your Honor.

Mr. Foreman: We would like for the jury to have the benefit of comparing the endorsements.

The Court: Certainly. They are in evidence.

Mr. Wilkey: They were passed to the jury yesterday.

Mr. Foreman: I want to pass them for the purpose of the endorsements.

Q. (By Mr. Foreman) Now, Mr. Williams, how many accounts did the Texas State Bank of Alice have during the period you were there from 1946 to 1951?

A. I don't know.

Q. Could you estimate it within five or ten thousand?

A. I should say perhaps it was 3500.

Q. And do you recall all of those accounts at this time?

A. No, sir.

Q. If you had to recall all of the accounts that you did have, approximately how many do you think you could recall? Could you recall more than 150?

A. I doubt it.

Q. Then when you state that the accounts of any of these 16 names that appear as endorsers and payees of Government's Exhibits 17-A, et cetera, never came to your attention, what you mean is that you, at this time, do not specifically recall such an account, is that not true?

A. That is correct, yes.

Q. They may each have had accounts there, as far as you know, but you just do not recall whether they did or not?

A. They were not called to my attention, that is correct.

Q. But you are not saying that each one of them did not have a half a dozen accounts, are you?

A. No, sir.

Q. Then, Mr. Williams, do you know anything about either the blood relationship, relationship by marriage of W. M. Benson to any of the employees in the bookkeeping department or otherwise in the bank of the—anywhere in the Texas State Bank of Alice? Do you know whether he or his wife is related to any of the employees of the bank?

A. I have no such knowledge, no, sir.

Q. You mean you have no affirmative knowledge of such relationship?

A. Affirmative or negative.

Q. You have no knowledge of any kind?

A. No, sir.

Q. In other words, you do not know whether that is true or not?

A. Correct.

Q. With relation to their social contacts, do you know whether or not they ever socially visited in each other's homes, that is, any of the employees of the Texas State Bank of Alice and W. M. Benson?

A. No, sir, I have no knowledge.

Q. One way or the other?

A. No, sir.

Q. Now, with reference to the—whether or not the Diego Heras signature was authorized, do you know whether or not Diego Heras was the one who authorized the Diego Heras signature, if it were authorized?

A. No, sir.

Q. You do not know ~~who~~ authorized his signature, if anyone did?

A. No, sir.

Q. Who is Earl DeLaney?

A. Mr. Earl DeLaney is president of my bank.

Q. The bank of which you are executive vice president?

A. Yes, sir.

Q. Is he also not the largest stockholder?

A. Yes, sir.

Q. In addition to that, is he not an oil man with other interests in Southwest Texas?

A. He is.

Q. Do you know whether or not he was a member of the school board of the Benavides Independent School District in the year 1951?

A. No, sir, I do not know.

Q. You do not know that he was, or was not?

A. Of my own knowledge. Only by hearsay.

Mr. Wilkey: Your Honor, we submit that this is both improper recross examination because we did not go into it on redirect. It could be spun out indeterminately, and it is also improper direct examination because the questions are leading. We object on both lines.

Mr. Foreman: Those were preliminary questions to a point he did go into, and this was the next question, "Do you know whether or not that same Earl DeLaney you identified to the jury was the person who asked, as a member of the Benavides Independent School District, George B. Parr to commence signing—"

Mr. Wilkey: I object.

Mr. Foreman: Let me ask the question.

The Court: I don't know what you are objecting to.

Mr. Foreman: May I ask the question?

Mr. Wilkey: He is testifying.

The Court: I will permit you to ask the question, and instruct the witness not to answer until the Court has ruled. Now, will you ask your question?

Q. (By Mr. Foreman) Do you know whether or not Earl DeLaney was the member of the school board who, in 1951, asked George Parr to commence countersigning the checks of the Benavides Independent School District?

The Court: He couldn't truthfully answer that question. It is a combination question because he has previously testified he had no knowledge DeLaney was a member of the school board, so his answer to the question would necessarily be "No," because that is coupled in and made a part of the question. If you want to interrogate the witness as to facts, I suggest you do so one at a time.

Q. (By Mr. Foreman) Mr. Williams, do you know whether or not Earl DeLaney was the person who authorized the Texas State Bank of Alice to honor checks of the Benavides Independent School District countersigned by George B. Parr?

A. No, sir, I do not know that.

Q. Do you know it is not so?

A. No, sir.

Q. With reference to the question just asked you about the checks now being passed from juror to juror, the endorsements thereon, do you know that those endorsements are not the genuine signature of the persons whose names purport to be endorsed thereon?

A. No, sir, I do not know that.

Q. You are not saying either way?

A. No, sir.

Mr. Foreman: Thank you.

Mr. Wilkey: No further questions, Your Honor.

The Court: You may step down, sir.

2-564 MRS. EDNA FITCH,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

2-565 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, please, ma'am?

A. Mrs. Edna Fitch.

Q. And where do you live?

A. Alice, Texas.

Q. And how long have you lived in Alice?

A. Around 16 years.

Q. Were you ever employed by the Texas State Bank at Alice?

A. Yes, sir.

Q. In what years were you employed there?

A. I began work in January of 1941 and left in 1950, November of 1950.

Q. November of 1950?

A. Yes, sir.

Q. What was your position with the bank?

A. I worked in the bookkeeping department, and then relief teller, and then teller.

Q. As a teller, what were your duties there?

A. Taking in deposits and paying out cash.

Q. Were you a teller in the years 1949 to 1950?

A. Yes, sir.

Q. During that time, what teller's cages did you work in?

A. I was in No. 3 the last part of 1949, and 1950 for sure.

Q. All right. During the years 1949 and 1950, were you acquainted with a gentleman by the name of Mr. Diego Heras?

A. Yes, sir.

Q. Did you see Mr. Heras from time to time during those years?

A. Yes.

Q. Where did you see him?

A. There at the bank.

Q. When you would see Mr. Heras at the bank, where was he and what was he doing?

A. He came in the bank and went to Mr. Donald's office.

Q. And where was Mr. Donald's office in relation to where you worked in the teller's cage?

A. It was to my left in the bank.

Q. All right. Was the Benavides Independent School District a depository in that bank while you were there?

A. Yes, sir.

Q. Did you, on occasion, pay checks drawn on the Benavides Independent School District?

A. Yes.

Mr. Foreman: Your Honor, I am objecting to the leading nature, not to the evidence, but to the form of the question.

The Court: Objection sustained.

Q. (By Mr. Wilkey) Did you, in the performance of your teller's duties—state whether or not you ever had occasion to pay any checks drawn on the Benavides Independent School District?

A. Yes.

Q. Did you ever—state, please, whether you ever had more than one check of the Benavides Independent School District presented to you for payment at one time?

A. Yes, I did.

Q. And when more than one check was presented to you for payment at one time, about how many checks, if you recall, would be presented to you?

A. They varied in number.

Q. Well, about how many would be the smallest group you remember, and how many would be the biggest group?

A. Well, I would say not less than four, and I just don't know how many.

Q. Do you recall who presented those checks, those bundles of Benavides Independent School District checks, to you for payment there in your teller's cage?

A. Mr. Donald.

Q. Mr. Donald?

A. Yes.

Q. Mr. Tom Donald?

A. Yes.

Q. Are you acquainted with him, Mrs. Fitch?

A. Yes.

Q. Would you point him out in the courtroom?

A. He is right over here (indicating).

Q. All right, ma'am. What was Mr. Donald's capacity with the bank when you were working there?

A. He was cashier.

Q. Just how did Mr. Donald go about presenting those checks to you for payment?

A. He brought them to my window with a tape, a list on them, an adding machine tape list, totaled.

Q. The tape would show the total of the checks in the bundle?

A. Yes, sir.

Q. Do you recall what amounts those bundles would total?

A. Well, they varied.

Q. Between what limits, ma'am?

A. Mr. Wilkey, the lowest one I ever remember was $8000, and the highest twelve.

Q. Between eight and twelve thousand?

A. That is what I remember.

Q. To the best of your recollection?

A. Yes.

Q. When he would bring those bundles of Benavides Independent School District checks to you with the adding machine tape on them, what did you do?

A. He either got the money himself, or I gave him the money.

Q. All right.

Mr. Foreman: What was the answer? "I gave," and there is a word or two I missed after "gave."

The Court: "Gave him the money."

Q. (By Mr. Wilkey) And when you would give him the money, what would you do? Describe it to us, remembering not all of us are bankers.

A. I sent them up to the bookkeeping department.

Q. Did you count out the money for Mr. Donald?

A. I checked it often.

Q. Now, then, when he would get the money, what did he do?

A. He took it back to his office.

Q. I am trying to get the process that went on there in the teller's cage. When Mr. Donald brought the bundles in, where did he put the bundles of checks, and where did he get the money?

A. He put the money I gave him in an envelope.

Q. All right, and where did he put the checks?

A. He put them down on the counter on my right.

Q. Where you would put them if you were making the transaction yourself, is that right?

Mr. Foreman: I object as leading and suggestive, the form of the question.

A. Where I put any other checks.

The Court: Objection sustained.

Mr. Wilkey: Your Honor, I am trying to get to the exact process, and it appears so simple to this lady who has done it many years.

The Court: I think what counsel wants you to do is let her tell what she did, instead of you telling her.

Q. (By Mr. Wilkey) At the time Mr. Donald would bring you those checks for payment, was there anybody at Mr. Donald's desk?

Mr. Foreman: Your Honor, we submit that likewise is a leading and suggestive question, and if counsel would ask the question instead of being hamstrung by the script he is reading from—

The Court: The question is, was there ever anyone at his desk. I don't think that is leading. It doesn't suggest either there was or wasn't. I will overrule the objection.

Mr. Foreman: In the interest of time, and to avoid a lapse, since Mr. Wilkey can talk faster than we can, if he wishes to read whatever she has written out for testimony, it will save time.

The Court: I am not suggesting he do that, and I overrule the suggestion.

Q. (By Mr. Wilkey) Go ahead Mrs. Fitch. Would you read the question back?

The Official Reporter (Reading): "At the times Mr. Donald would bring you those checks for payment, was there anybody at Mr. Donald's desk?'

A. Mr. Heras was either in his office or standing at the door of his office.

Q. Which Mr. Heras is this you are referring to?

A. Diego.

Q. Mr. Diego Heras?

A. Mr. Diego Heras.

Q. After you gave the money to Mr. Donald at your cage, or after he took it and put the bundles of checks down, what did Mr. Donald do?

A. He put the money in an envelope and went back to his office.

Q. Did you ever on any occasion observe Mr. Donald do anything with the money besides just carry it back to his office with him?

A. Yes.

Q. And what was that?

A. I saw him several times give that to Diego Heras.

Q. All right. Did you, yourself, ever put the money in an envelope, or did you just give it to Mr. Donald in the bundles of bills?

A. At one time I did, yes.

Q. Was that in reference to Mr. Donald or Mr. Heras?

A. I gave the money to Mr. Diego Heras one time.

Q. One time?

A. Yes.

Q. Would you describe that instance for us, Mrs. Fitch? How did it happen that you gave the money to Mr. Heras instead of Mr. Donald?

A. Mr. Donald was out of the bank. There was no one there, and Mr. Diego Heras came to my window. Mr. Williams was out of the bank also.

Q. All right, and when Mr. Heras came to the bank to your window, what did he do?

A. He presented the checks to me for payment, and I cashed them for him. They were the same way I had seen them before, in a batch with the tape on them, the adding machine tape.

Mr. Foreman: If it please the Court, that part of the answer is not responsive, and I object for that reason. She has answered the question.

The Court: You mean that it is in the same way?

Mr. Foreman: Yes, Your Honor, it is argumentative.

The Court: The same way as, what was her testimony?

Mr. Foreman: As before, I think she said.

The Court: Yes, I will instruct the jury not to consider the answer it was the same way as before.

Q. (By Mr. Wilkey) Now, Mrs. Fitch, what were those checks that Mr. Heras presented to you for payment?

A. Benavides Independent School District checks.

Q. Were they made out to the same payee or different payees?

A. I didn't check them.

Q. All right. Did Mr. Heras endorse them, or not?

A. No, he did not endorse them.

Q. All right. Now, then, do you recall how much money you gave Mr. Heras on that occasion?

A. No, I don't. No, I don't know the amount.

Q. You don't recall the exact amount?

A. I do not.

Q. Do you recall—when is the next time you saw Mr. Heras after you gave him the money for those checks?

A. The next day. No, no. Shortly after he left the bank.

Q. Shortly after he left the bank?

A. Yes.

Q. All right, and what occurred then?

A. I handed him the envelope with the money in it, and he gave it back to me and wanted to change the denominations.

Q. For clarity, let me interrupt. Are you referring to the first time he was in the bank that day, or the second time?

A. I am referring to the time he came in and presented the checks to me.

Q. All right, fine. Go ahead.

A. I gave him the money. He handed it back to me, and wanted to change the denomination of some of the bills.

Q. All right. What did you do?

A. In the process of changing the bills, I had to leave my desk and I don't know whether it was a telephone call or whether I had to go to the vault for money, but I had shortaged him $1000.

Q. All right. Now, then, how did you become aware that you had shorted him $1000?

A. He called me, and I checked my window.

Q. Did he call you by telephone?

A. Yes.

Q. You checked your window?

A. Yes.

Q. Then what next occurred?

A. He came back for his $1000. I told him that I was over $1000, and that I knew it was his.

Q. What did you do at that time?

A. When he came back, I gave him the $1000.

Q. Do you recall his appearance when he came back there the second time?

A. Well, yes.

Q. How was it?

A. I would say he was very upset and very frightened, and he was just awfully upset.

Q. All right. When is the next time you saw Mr. Diego Heras?

A. The next day.

Q. What took place on that occasion, the next day?

A. He brought a box of candy.

Q. What did he do with the box of candy?

A. He gave it to me.

Q. What did you do with it?

A. I opened it and passed it around to the employees.

Q. Now, then, have you ever seen Mr. Diego Heras come in the bank with Mr. George Parr on any occasion?

A. Yes.

Q. On one or more than one occasion?

A. Several.

Q. What would be their demeanor when they would be coming into the bank together?

A. Very friendly, I woud say.

Q. And did you ever have any transactions with Mr. Parr at your window?

A. Yes.

Q. And what were the nature of those transactions?

A. Often I cashed checks for him, other times he brought his oil checks in and brought them to my window for me to deposit, and I made duplicate deposits for him.

Q. When you say he brought checks in there for you to cash, what kind of checks were they?

A. To cash?

Q. I understood you to say—

A. The ones to cash?

Q. Yes.

A. I cashed some Benavides Independent School District checks, but there was always a personal check, and usually sometimes a small oil check.

Q. Now, those Benavides Independent School District checks, were there one or more than one of them?

A. Oh, maybe two. Maybe one, maybe two.

Q. And to whom were they made out?

A. I didn't check to see.

Q. Were they made out to Mr. George Parr?

A. I never did check those checks.

Q. What was Mr. Parr's position in the bank at the time you were working there and cashing those checks?

A. That I just don't know.

Q. Who was president of the bank?

A. I thought he was.

Q. Now, then, did you always get the cash out yourself and give it to Mr. Parr, or was it sometimes done a different way?

A. He cashed his own checks.

Q. How did he go about cashing his own checks?

A. He took large bills and then the rest of it just would—just happened to come out in hundreds.

Q. When you say he would take large bills, would you describe what he physically would do?

A. Well, he just reached in my cash drawer and took out the money that—the amounts of the checks, the total of the checks.

Q. Mrs. Fitch, I know it is very simple to you, but I am trying to get the exact details of the process. Is that similar or dissimilar to what Mr. Donald would do when he cashed bundles of checks there?

A. When Mr. Donald brought the Benavides checks to me, he took the money. When Mr. Parr came in and cashed his check, he took the money from my drawer, and I stamped those checks. They were cash-out checks, and I stamped those.

Q. You included the Benavides checks in those when you stamped those?

A. When he got cash on them, I would put the others Mr. Donald got with it.

Q. Did you ever examine those Benavides checks for endorsements?

A. No, sir, only one time I did.

Q. All right. That one time, were they endorsed or not?

A. They were endorsed by—they were endorsed, yes.

Q. Was Mr. Parr's endorsement on them?

A. No.

Q. What was your answer?

A. No, sir.

Mr. Wilkey: No further questions.

Mr. Foreman: May it please the Court, we object to the testimony of this witness as to the transactions at the bank and ask the jury be instructed not to consider it.

The Court: You said something about transactions at the bank.

Mr. Foreman: Between B. F. Donald and her, and between George B. Parr and her, as to all of the defendants except the bank, Parr and Donald. And as to Parr and Donald, we object as between them as to any transaction occurring between her and the other one when the other was not present, and ask the jury be instructed not to consider it as to any defendant except them, and further object to it as to them for the reason there has been no showing any of these checks so cashed were not perfectly proper, or any predicate laid for an odious inference to be drawn from such practice.

The Court: Have you finished?

Mr. Foreman: Yes, Your Honor.

The Court: I will hear the Government.

Mr. Wilkey: The Government offers this evidence on all counts, the first 19 as showing the scheme to defraud and the 20th, the conspiracy count, as against all defendants. We have not, I believe, from this witness asked for any conversations. I don't think she testified to any conversation. If she said any conversation with these parties, we would have offered it as to these individuals only. I believe her testimony is only as to acts.

The Court: Objection overruled, and it is about two minutes to twelve. The court will recess until 1:45.

AFTERNOON SESSION—MAY 9, 1957

3-581 MRS. EDNA FITCH,

being the witness who was on the stand at the time court recessed for luch, resumed the stand at this time, and continued her testimony as follows:

3-581 CROSS EXAMINATION

Q. (By Mr. Foreman) Mrs. Fitch, when Mr. Wilkey was examining you before the noon recess, did you observe him as he would question you reading from a script printed—

A. A script?

Q. Typewritten papers presumably questions and answers. Did you observe that?

A. I wouldn't know whether it was typewritten or not.

Q. Whether you knew it was typewritten or not, did you not observe him keeping his eye apparently reading, as he would ask you questions?

Mr. Wilkey: Your Honor, I think this is completely immaterial. Never before have I had opposing counsel comment on the type of notes I used to examine a witness, and whether I had notes or not, and I have never attempted to criticize opposing counsel.

The Court: The explanation is not necessary, Mr. Wilkey. I will advise the jury counsel may refer to notes. It is permissible. If counsel wants to interrogate this witness about it, I will permit it.

Q. (By Mr. Foreman) Will you answer the question? Do you know what the question is, please, ma'am?

A. You asked if it was a typewritten—

Q. Go ahead.

A. Yes.

Q. Now, had you seen this script from which he was reading after your former testimony in this—in the United States District Court?

Mr. Bottler: We object.

Q. —in November, in your testimony now?

Mr. Bottler: We object to counsel characterization of notes as a script.

The Court: Well, the objection is overruled. When he says script, he means notes.

Q. This booklet, whatever it was, from which Mr. Wilkey was reading, had you seen, examined and read that?

A. No.

Q. You had never seen it at any time?

A. I don't think so.

Q. Had you talked with Mr. Wilkey about your testimony after your former testimony, and before you took the stand this morning?

A. Yes, I talked.

Q. Did he at that time have the same bulky instrument, script, or notes from which he apparently read as he asked you questions this morning?

A. I haven't seen it since I have been in the courtroom. I don't know.

Q. Did he have a similar paper as he examined you in his office this morning before you took the stand later?

A. He talked to me this morning.

Q. Mrs. Fitch, I asked you if, at the time he talked with you this morning, he had in his hand the transcript, notes, or whatever it was in the blue back from which he read as he asked you questions here this morning? Did he or not?

A. Mr. Wilkey had a file in his office, a manila file.

Q. Is your answer that that is all you saw, and you did not see the booklet with the blue backs?

A. I don't remember seeing it, no.

Q. All right. Do you know that what he had purports to be your testimony at the former trial of this case?

A. It sounds familiar, yes.

Q. Could you, by examining the file from which Mr. Wilkey examined you, find in there where you testified at the former trial of this case that George Parr cashed checks in your booth or window at the Alice bank, the Texas State Bank of Alice?

A. No, sir.

Q. You didn't testify to that formerly, did you, at the other trial of this case in the United States District Court?

A. Not in Houston, no.

Q. You had the same United States District Attorney examining you, Mr. Bottler and Mr. Wilkey, at that time that you now have?

A. That is correct.

Q. Now, Mrs. Fitch, whom have you talked with since you testified at the last trial?

A. That evidence came out in New Braunfels.

Q. Yes, and before you talked in New Braunfels, whom had you talked with representing the prosecution in this United States Government case after you testified here and before you testified in New Braunfels? Whom had you talked with?

A. I talked to so many investigators, I don't know.

Q. Among them was this representative of the post office department, Mr. W. B. Main, wasn't it?

A. Let't see. Since the new Braunfels trial?

Q. No, since the trial in Judge Hannay's court when you did not testify about Mr. George Parr cashing any checks, and before you testified in New Braunfels?

A. Mr. Foreman, those questions about Mr. Parr weren't asked me before in this court.

Q. That is not my question. My question is who talked with you representing the United States prosecution, the District Attorney, or the postal department after you failed to testify as you now testify, and before you first testified—

Mr. Wilkey: We object.

Mr. Foreman: —to that in New Braunfels?

Mr. Wilkey: We object to the word "failed." Obviously any witness would fail to testify about anything she was not asked, and she has testified she wasn't asked that here.

Mr. Foreman: I object to the argument and speech. I have no objection to an objection, but when he makes an objection, I don't think he should continue and make a speech to the jury.

The Court: I think possibly the use of the word "failed" may be understood to mean a wilful failure. I will permit—

Mr. Foreman: I will rephrase it.

The Court: I don't want to be interrupted. I will permit counsel to interrogate the witness whether or not there has been a wilful failure, but I think it would be clearer to refer to testimony that she did not give at any previous trial as matters she did not testify about, rather than a failure or a wilful failure.

Mr. Foreman: I will rephrase it.

The Court: I will again announce, if you want to interrogate her as to a wilful failure, it will be permitted.

Q. (By Mr. Foreman) Mrs. Fitch, how many times prior to testifying in Judge Hannay's court had you talked with representatives of the prosecution, either postal inspectors, assistant district attorneys, the District Attorney, or the grand jury?

A. I can't be accurate on that because I talked to them so many times .

Q. Would you say as many as 20 or 30?

A. No, I wouldn't say that.

Q. Ten or 15?

A. I talked to different ones all the time. I might see Mr. Main, say, in New Braunfels, and we would talk, if that is what you mean, but he didn't ask me questions all the time I was talking to him.

Q. Mrs. Fitch, I mean with reference to whatever you know about the conduct of the business of the Texas State Bank at Alice in Alice, Texas, in connection with the acts of the Benavides Independent School District, and my question, please, ma'am, goes back to prior to the trial in November. How many times, on how many different occasions, prior to your testifying at that trial did you discuss the transactions at the bank with representatives of the Federal Government, or of the State Government. First I will say the Federal Government?

A. It started way back there with Mr. Niendorf and Mr. Henley.

Q. And way back there was when, please?

A. I don't remember the year.

Q. Was it 1952?

A. I just can't say. It was before the grand jury here in Houston, whenever that was.

Q. Well. did you appear before the grand jury here in Houston?

A. Yes.

Q. The United States—

A. Yes.

Q. —District Court Grand Jury?

A. Yes, I had a subpoena.

Q. And you testified at length before the grand jury, did you not?

A. I testified as long as they kept me, yes.

Q. You were there, and they asked you a great many questions, did they not?

A. I didn't stay as long as some of the others, no.

Q. That is not my question, little lady, as to how long somebody else stayed. My question is, did they ask you a great many questions?

A. Yes.

Q. And before the United States District Grand Jury, the Federal Government was represented by Mr. Wilkey and Mr. Bottler, was it not?

A. The grand jury?

Q. Before the grand jury, were you or were you not questioned by Mr. Ed Bottler? This is Mr. Bottler.

A. No.

Q. Were you questioned by Mr. Wilkey?

A. Some, yes.

Q. Then he was there, present?

A. Yes.

Q. Tell us approximately in your best judgment how long you were before that jury?

A. I think about 45 minutes.

Q. Forty-five minutes?

A. Yes.

Q. And that is considerably longer than you were on the witness stand this morning, isn't it?

A. I guess so. I don't know.

Q. You went on the witness stand this morning at about 11:30 or thereabouts, didn't you?

A. I believe so.

Q. Really 11:40, isn't that true?

A. I guess so.

Q. Then you were—if you were on the stand 20 minutes this morning, and before the grand jury 45 minutes, you were before the grand jury being questioned twice as long as you were here this morning, weren't you, Mrs. Fitch?

A. Yes.

Q. Now, you had been questioned by Mr. Niendorf, a representative of the Federal Government, was he not?

A. Yes.

Q. And what was the other man?

A. Mr. Henley.

Q. H-e-n-s-l-e-y?

A. I believe that is the way you spell it.

Q. He was a representative of the Federal Government, wasn't he?

A. Yes.

Q. Can you tell this jury how many months or years it was, if years, before you appeared before the Federal Grand Jury, that you talked with Mr. Niendorf or Mr. Henley, Mrs. Fitch?

A. No, I can't be exact.

Q. Well, without being exact, will you give us your best judgment?

A. I just don't know.

Q. You don't know whether it was two months or two years?

A. It was less than two years.

Q. Was it more than a year?

A. I am not positive about that, Mr. Foreman.

Q. And you would not be able to give us a better estimate than you have?

A. I am not positive about it.

Q. After you talked, or before talking, or between talk with Mr. Niesdorf and Henley, did you not talk with U. S. Postal Inspector W. D. Main?

A. Yes, he came by my home.

Q. And did you or not, at the same time or different times, talk with U. S. Postal Inspector Cauley, C-a-u-l-e-y?

A. They came together.

Q. And were your conversations with Niendorf and Henley together, or at different times?

A. I talked with Mr. Niendorf and Mr. Henley together.

Q. All right.

A. Mr. Henley later.

Q. Then you had talked with Mr. Henley twice, Niendorf and Henley once, and when was it, with reference to the conversations with Henley himself and the conversations with the two of them, Henley and Niendorf, that you talked with Postal Inspector W. D. Main?

A. Mr. Main came to my house, Mr. Main and Mr. Cauley came to my house one time and I refused to talk.

Q. When was that?

A. I don't remember the dates.

Q. Well, that is the time you didn't talk to them. When did you talk to them?

A. I don't remember.

Q. You stated, I believe, that you had talked to Mr. Main at least before you came before the Federal Grand Jury, is that true or not?

A. I believe I did. I am not—yes, I think so.

Q. And will you tell this jury approximately how long you talked with Mr. Main when you did talk with him?

A. Oh, about 15 or 20 minutes.

Q. And where was that?

A. It was at my house.

Q. Was that after the time you refused to talk to him and Mr. Cauley together?

A. That is true.

Q. How long after you had refused to talk with him was it that you did talk with him?

A. Oh, I imagine three or four months, maybe.

Q. And did you at that time make and sign a statement?

A. To whom?

Q. Mr. Main?

A. No.

Q. Did you make and sign a statement to Mr. Niendorf and Mr. Henley?

A. Yes.

Q. Ma'am?

A. Yes.

Q. And how long did you talk with them at the time you made and signed—did you make and sign more than one statement?

A. No.

Q. At the time you made and signed the statement to Officers Niendorf and Henley, how long was that—did you talk with them at that time?

A. A little over an hour.

Q. Over an hour?

A. Yes.

Q. And they asked you in detail as to the transactions, circumstances, and practices concerning George B. Parr, B. F. Donald, the Benavides Independent School District, and the routine of the Texas State Bank of Alice, did they not?

A. They asked more or less about the routine, yes, about the checks, how they were supposed to be stamped and all.

Q. And practically every question they asked you this morning was asked then, weren't they?

A. Some of them, yes.

Q. Now—

A. He left out a whole lot.

Q. After you came here before the grand jury, how long elapsed before you came back in November to testify?

A. The grand jury was, I believe in October—I don't know. It was in October, I think. I don't know what year.

Q. Was it the same year as the testimony, or was it the preceding year, that is with the testimony before the grand jury, the October preceding the November testimony in court, or was it the October preceding the October—was it October 1956 or October 1957—I mean 1955 that you came before the grand jury?

A. Well, I came when they had it, and I don't know.

Q. Without knowing the exact year, ma'am, would you tell us whether or not it was in the same year? Was it about 30 days later?

A. No, it was longer than 30 days later from the time I talked to them and I came before the grand jury.

Q. Would you say approximately a year and eleven months?

A. It was, I believe, less than a year.

Q. Now, when you came here to go before the grand jury, and before you went there and stayed about 45 minutes, did you talk with Mr. Wilkey or Mr. Bottler?

A. Mr. Bottler wasn't there.

Q. I understand he was not before the grand jury. That is not my question, please, ma'am. I asked you if, here

in Houston at the Criminal Courts—at this building in the offices before you went up before the grand jury, did you talk, before you went before the grand jury, either with Mr. Bottler or with Mr. Wilkey, whom you stated was before the grand jury?

A. No.

Q. Now, you appeared and testified, and did not testify about Mr. Parr ever going into your cage and cashing Benavides Independent School District checks in November. When did you return to wherever your home is, Alice, Jim Wells County, I presume?

A. That is correct.

Q. When did you return there with reference to your testimony in November? Did you go back in December?

A. After I was before the grand jury.

Q. I mean, now, chronologically to the time of your testimony actually before the United States District Court with Judge Allen B. Hannay presiding. That is the time I now direct to your attention and ask you to fix the date of your return to Alice. When was it? Did you go back in November or December?

A. We went back on, I believe, Sunday after my testimony, after I was on the stand.

Q. Do you know whether you were on the stand in December or not, or was it November?

The Court: Isn't there information as to the date of your testimony, and can it not be stipulated between counsel?

Mr. Foreman: I would love it. Do you have it in the record?

Mr. Wilkey: It was on Friday, the first week of the trial, which began on November 8, which was a Wednesday.

The Witness: It was on the 9th.

Mr. Wilkey: I think it was on the 9th or 10th of November, 1956, she testified in Judge Hannay's court.

The Court: Can that be stipulated?

Mr. Foreman: It is agreeable with us.

The Court: It is so stipulated.

Q. (By Mr. Foreman) Mrs. Fitch, how long was it after the trial was over—do you know when the trial was over? Was it December 17?

Can we stipulate that? May we stipulate that date? I believe it was December 17. Was it or not?

Mr. Wilkey: It is probably that date. I am willing to stipulate it.

The Court: Very well, so stipulated December 17, 1956.

Mr. Foreman: Yes, Your Honor.

The Court: Very well. So stipulated.

The Witness: I went on the stand on November 9, is that correct, did you say? I stayed here nine days.

Q. (By Mr. Foreman) We will pass that, Mrs. Fitch, please, ma'am. We are just trying to fix a date is all. When was it after the first of the following January, after the trial was over, that you first were called upon, if you were called upon, by any representative of the prosecution in your home at Alice?

A. Before the trial in New Braunfels?

Q. Well, you can fix it that way if you like, but my question had to do with the other action. After January 1, 1957, were you called upon in Alice by Postal Inspector W. D. Main?

A. No.

Q. Whom did you talk with?

A. I didn't talk to anybody.

Q. Well, when did you first talk with Postal Inspector Main after being here in November?

A. Oh, I ran into him in New Braunfels.

Q. Was it there you talked with him?

A. Yes.

Q. Had you, before that time, talked with him?

A. I don't think so.

Q. Had you talked with anyone else from the District Attorney's office after you testified on the stand, and before you went to New Braunfels?

A. Let me think. As far as I remember, no.

Q. Had you talked with other representatives of the United States Government after you left here in November and before you appeared in New Braunfels?

A. I don't think so.

Q. Well, do you know whether you did not, Mrs. Fitch?

A. I don't believe so.

Q. Is your memory clearer back seven years than it is

three months? Can you remember far-removed things better than you can more recent occurrences?

A. Some things you never forget.

Q. My question is the type memory you have. Do you find it easier to remember far-off events? The more remote they become, is it the more vivid they are in your recollection?

A. Maybe it is unpleasant things I remember.

Q. Then, by that, do you mean that the severance of your relationship with the Texas State Bank at Alice was unpleasant?

A. No, I mean just cashing those checks was unpleasant.

Q. Well, were you or not voluntarily—did you retire voluntarily from the Texas State Bank of Alice, or were you discharged?

A. Well, I finally quit.

Q. Well, did you finally quit by orders of the people you are now testifying against or otherwise?

A. Would you like the jury to know all about that?

Q. No, ma'am. I am simply asking you—

A. Are you sure you want me to tell the circumstances under which that happened?

Q. No, ma'am. I am asking you if you resigned.

A. Well, I will tell you, and it isn't going to be good.

The Court: It has not been asked for, and I will instruct the witness the more orderly way to proceed, to present testimony, is to give answers to question, and I will instruct the witness to answer the question asked and not to volunteer any information.

Q. (By Mr. Foreman) Mrs. Fitch, are you—do you bear an animus, grudge, or feeling in this case?

A. No, I was glad to get out of there.

Q. Regardless of being glad to get out of there, wherever you got out of, do you at the present time bear an animus, a grudge, or a feeling against either Mr. Donald or Mr. Parr?

A. I feel pity for them.

Q. You feel a certain amount of contempt and resentment?

A. No contempt.

Q. Just pity?

A. Yes.

Q. That is your only reaction?

A. That is true.

Q. Do you recall—do you know the amounts of any checks you claim now, claim Mr. Parr cashed himself out of your funds as teller at this teller's cage in the Texas State Bank at Alice?

A. That I claim he cashed?

Q. Well, that is my question. Do you know the amounts of any checks he cashed, or that you now testify he cashed at your teller's cage?

A. No, because when he came in, his personal check was usually in the hundreds, usually it varied by four or five, or in the hundreds. And the other checks might be one or two, and then plus an oil check, and I did not make a list of the checks. I did not know how much money he took out of the drawer, but I would stamp them after he put them in my drawer, without their being stamped. I took them out and stamped them, which I was supposed to do.

Q. As I understand your answer, his personal check was in the hundreds? Do you mean by his personal check, the oil payment checks that I think you mentioned this morning?

A. He had a personal account there in the Texas State Bank. I believe that is the one. It could have been on the San Diego bank, but I think they were on the Texas State Bank.

Q. Then the personal check you stated he would cash on these occasions would be a check he would fill out and sign his own name to, payable to cash, or to himself?

A. Yes, sir.

Q. And that would be for several hundreds of dollars?

A. Yes.

Q. And the other would be what type checks?

A. Benavides Independent School District checks, and an oil check.

Q. How many BISD checks do you recall him cashing at any given time?

A. I wouldn't say over two. I don't know for sure, but there might have been two. I don't believe there were any more than that at a time.

Q. Then those great bundles of checks the prosecuting attorney asked you about this morning would be an oil payment check, his personal check, and a BISD check?

A. Well—

Mr. Wilkey: I believe counsel is unintentionally misquoting the testimony. The bundles, I believe, referred to Mr. Donald. I did not refer to Mr. Parr's check in that way.

Q. (By Mr. Foreman) Could you tell us with reference to the checks Mr. Parr cashed in the manner you testified he cashed them, what the amounts of any certain check for the BISD or to whom it was payable or for what

it appeared to have been issued, do you know the answer to that, Mrs. Fitch?

A. No, but I don't think—I am sure some of them weren't made out to him. I never did check the endorsement on them, no.

Q. Did you check the payee on them?

A. Well, I just glanced. It could have been anybody's name.

Q. As to amounts, could it have been $75 or $150?

A. I wasn't worried about that.

Q. You do not know whether or not it was some janitor or schoolteacher's check he had cashed for them or not, do you?

A. No.

Q. Ma'am?

A. No.

Q. As far as you know, it might have been?

A. It could have been.

Q. Thank you. When did you leave the bank, Mrs. Fitch?

A. November, 1950.

Q. 1950?

A. Yes, November, 1950.

Q. And you never, at any time, worked there after September 1, 1951, did you?

A. No.

Q. Now, getting back to the bundles which Mr. Wilkey explained, and which I appreciate, what were the most number of any checks you ever saw Mr. Donald present?

A. The number or the amount?

Q. The number.

A. I said this morning that I did not know.

Q. Well, as your best judgment. Was it sort of like a bale? Was it a bundle like that, or four, five, eight or ten checks?

A. I don't think he could have carried it if it had been a bale.

Q. Tell us as best you can as to the number of such checks, with our understanding that it is remote and you possibly don't remember.

A. It could have been twelve or fifteen, maybe. It was never less than four.

Q. Anywhere from four to fifteen?

A. Yes, I would say that.

Q. Could it have been five or six or seven?

A. Yes, they varied at different times. It all depended on how much money they needed.

Q. In banking knowledge and nomenclature, do you all refer to four checks as a bundle of checks? Would four checks be a bundle?

A. Well, it all depends on who is talking, I guess.

Q. Whether or not a man is prosecuting, or whether or not a man is working in a bank?

A. Yes.

Mr. Foreman: May it please the Court, in view of this witness' testimony as to the transactions about which she has testified of having occurred prior to her leaving in November, 1950, and in view of the fact that, as heretofore stated, the date, we ask with reference to this witness, Your Honor, that the Government limit—the the Court limit the testimony to whatever the Government says and whatever count the Government claims, and whatever defendant the Government claims the testimony is pertinent to, and that it not be received as general evidence.

The Court: What says the Government?

Mr. Wilkey: The Government offers the testimony of this witness in regard to the guilt of all defendants and on all counts.

The Court: It will so be received, and the motion is overruled.

Q. (By Mr. Foreman) Mrs. Fitch, with reference to the attitude, the demeanor apparent upon their coming to the bank together, that is Diego Heras and George B. Parr being very friendly, would you or not say that Mr. Parr's attitude to almost everyone was very friendly?

A. Oh, yes.

Q. Ma'am?

A. Yes.

Q. As a matter of fact, that is a most characteristic attitude, his friendliness generally with everyone?

A. Yes.

Q. Did you notice any undue cordiality, or brotherly love, or compatibility between him and Diego Heras that was not likewise apparent between him and the public generally with whom he came in contact?

A. Well, they were sort of buddy-buddy.

Q. That is a very good expression, if you will just tell us what it means.

Mr. Wilkey: Do I understand counsel is putting in evidence, bring in the issue of Mr. Parr's reputation in the community for friendliness? If so, I would like to know, or know the character of evidence this is.

Mr. Foreman: I am not doing so at all. I am asking what, if anything, she observed different in his attitude toward this man and his general attitude, and that is as to what—

The Court: It is cross examination. It will be permitted.

Mr. Wilkey: If the Court please, the Government does reserve the right, if he goes far enough into the matter of the friendly character of Mr. Parr, to put in evidence on our side, if he develops it.

Mr. Foreman: We ask that the jury be retired for a motion.

The Court: Very well. The jury will be retired.

(The following proceedings were held outside the presence and hearing of the jury.)

Mr. Foreman: May it please the Court—

The Court: This motion is to be directed to the remark of Mr. Wilkey?

Mr. Foreman: Yes, Your Honor.

The Court: Very well. So I can better follow you, I want the reporter to read it back to me slow enough I can write it down.

The Official Reporter (Reading): "If the Court please, the Government does reserve the right, if he goes far

enough into the matter of the friendly character of Mr. Parr, to put in evidence on our side, if he develops it."

The Court: Very well. I will hear your motion now.

Mr. Foreman: May it please the Court, the Defendant George B. Parr moves for a mistrial because of the prejudicial and inflammatory nature of the remarks just read back by the reporter to the Court as a comment upon the failure of the Defendant George B. Parr to produce evidence as to his friendly character, and as, in effect, putting such reputation and character in issue on the part of the prosecution, it not having been opened by the defense, and for that reason, in effect, being a comment on the failure of the defendant to testify, and as for each of these reasons, it being of such damaging nature coming from a man occupying the official position as the trusted and respected position of Mr. Wilkey, as calculated to suggest and infer to the jury that Mr. Parr was a pugnacious and not a friendly individual and it being an effort to try the defendant on his reputation for unfriendliness or pugnacity rather than on the evidence in this case, and as further we object to that as a comment on the failure of the defense to produce evidence.

The Court: Comment on the failure of the defense to produce evidence?

Mr. Foreman: Yes, sir, the Defendant Parr.

The Court: Your motion was either to—covered a matter of comment on the failure of Parr to testify, didn't it? He hasn't so failed.

Mr. Foreman: I excluded that.

The Court: The trial is still open.

Mr. Foreman: I state to the Court, we do not intend to place the Defendant Parr on the stand as a witness.

The Court: Well, that wasn't in the mind of the Court at the time I heard it, and I don't think it could have been in the minds of the jury, and I don't think it could have been in the mind of the prosecution because that had not been announced to the jury and the prosecution that he would not testify, and it is well known he has a right to testify. I will hear the Government.

Mr. Wilkey: The motion in regard to comment on the failure to testify or comment on failure of the defendant to produce evidence is, of course, on the face of it bad. The opportunity for such has not come. My reservation of what the Government would be allowed to do later on was directed solely and only to the testimony of this witness elicited by Mr. Foreman in the questioning in regard to Mr. Parr's friendly character, and I believe specifically he said, now, that was his character or his friendly nature toward everyone, wasn't it, and there was another question or two along the same line. The Court ruled this line of questioning would be permitted, but I made the reservation if it went so far as to put the character in evidence, we would reserve the right to offer any evidence on that point. I merely wanted to call the attention—

The Court: You mean by way of redirect examination of this witness, or by other witnesses?

Mr. Wilkey: I would like to, if the character evidence had been developed here, I would like to reexamine and redirect examine this witness here, and this was my reason of the statement of reservation. I did not want later on to be in the position of arguing with the Court's ruling, because the Court had said, "Very well. I will permit this line of inquiry on cross examination," and I want to say, if it goes far enough, I wanted to rise again to the point and question on this point. That was the sole purpose of my statement of reservation, and that was the way it was made, and I believe it would up, "if he develops it." It was contingent on further examination by Mr. Foreman.

Mr. Foreman: If it please the Court, I call the Court's attention to the fact that we did not open up the friendliness of George B. Parr, but the prosecution itself opened up the friendliness with Diego Heras, and we were asking about what the prosecution had asked about, as regards the friendliness the prosecution developed.

The Court: Yes, and the Court allowed that line of questioning.

Mr. Foreman: Yes, Your Honor, and we did not open up the reputation and the suggestion coming with it, as far as I know, any place in the procedure authorizing or making it necessary for either side to reserve anything or to make any comment on what they were reserving.

The Court: I don't think it was necessary to make the exception or reservation, but I want to examine it particularly as to whether it is prejudicial to such a point it would justify a mistrial.

Mr. Foreman: Yes, Your Honor. Of course, we are the only one who has the right to place that in issue.

The Court: Place what in issue?

Mr. Forema: To place in the reputation of the defendant or any defendant.

The Court: That is right.

Mr. Foreman: And we submit—

The Court: I am not certain that the testimony as to a man's friendly character—there are doubts in my mind it would open the question of what we know to be good character.

Mr. Foreman: I am in accord with the Court, and hold in the Court's opinion 100 per cent, but by the same token—

The Court: Some very bad characters are famous for their friendly character.

Mr. Foreman: To-wit: John Ross Hardin. May it please the Court, by the same token, the prosecution's remarks will shed, even from our standpoint, a worse light for the fact that he takes the position or attitude that the reputation is the contrary of friendliness, and therefore

he has got something that will hurt that man if he just gets a chance to use it. That is the inference entirely, and it is inescapable, and it would be improper for him to ask about it. We hold it is improper for him to comment and infer or suggest by innuendo and suggest to the jury he has something of such nature.

Mr. Wilkey: May I point out, there are two things actually developed from Mr. Foreman's questioning. One is the friendly relationship between Mr. Parr and Mr. Heras, about which the Government had indeed inquired, but Mr. Foreman went further and developed Mr. Parr's friendly nature toward everyone, and it was at that point I asked was he intending to put that in issue. That is what the defense developed, not we, and my remarks toward that were to find out how far he intended to go, and point out we felt we would have the right to develop from this witness the same thing. I will recall to Your Honor's mind, it was yesterday or the day before, that I believe from the Bench a question was addresed as to how far a line of inquiry like that was going, which was thought entirely proper under the circumstances, which I think this was. No objection was raised to it.

The Court: Are both parties finished?

Mr. Foreman: We have, Your Honor.

The Court: I would like to have an opportunity to examine the statement. I will state again, I believe it was unnecessary. The Government would have had the right without reserving the right. The Government would have

had any right it would have without audibly reserving the right, and do you want to be heard again or do you want to hear me?

Mr. Foreman: Go ahead. I wanted to ask the Court for the Court's benefit to get the last several questions ahead of this comment, because they were a part of it.

The Court: Very well. Mr. Foreman wants read the several questions ahead of the statement objected to. Will you indicate how far back to go?

The Official Reporter (Reading): "If the Court please, the Government does reserve the right, if he goes far enough into the matter of the friendly character of Mr. Parr, to put in evidence on our side, if he develops it."

Mr. Foreman: I had a suggestion from co-counsel to make to the Court. I will ask him to do so.

The Court: Very well.

Mr. Sharpe: I believe what the reporter read to the Court is sufficient.

The Court: Very well.

Mr. Wilkey arose and stated, the Government does reserve the right, if he goes far enough into the matter of the friendly character of Mr. Parr, to put in evidence on our side, if he develops it.

To the opinion of the Court, it is not prejudicial, but I will say to Mr. Wilkey and to all counsel on both sides,

you will have the right in this court to put in evidence on your side. That is what the statement is, and if there is any doubt about that, both sides will have the right to put in evidence on their side, and the motion is overruled.

(The following proceedings were had in the presence of the jury.)

The Court: Very well. You may continue Mr. Foreman.

Q. (By Mr. Foreman) Mrs. Fitch, with reference to the date of your leaving the bank, which I believe you have established as November 1950, how long was it before you shared the candy with someone else, or received the candy from Diego Heras, about which you testified this morning?

A. I don't know the date I shortaged him.

Q. I don't ask you what date did you receive the candy. I asked approximately how long was it before you left your employment, in months, years, or however else you measure time, that you received the candy?

A. He brought it to me the next day after I shortaged him the day before, and he came back the next day and brought the candy.

Q. We have got it from A to B. Let's get it from Z to B. How long was it in months or years, a year, two years, or five years, before you left, in your best judgment, that you received the candy?

A. I don't know, but I wish I did.

Q. Then you cannot fix it within any period of years?

A. Yes, it was within that year. I think it was within six months, or at least within six months before I left the bank, yes.

Q. All right, ma'am. Thank you.

A. Possibly three.

Q. All right. Do you know Diego Heras?

A. Yes, sir.

Q. Were you friendly with Diego Heras?

A. Yes, I knew him when I worked in the bookkeeping department.

Q. Was there anyone in the bank that you knew that was not friendly with Diego Heras?

A. No.

Q. Ma'am?

A. I don't think so.

Q. Now, tell us—

A. We were nice to him when he came in.

Q. Ma'am?

A. We were very nice to him when he came in.

Q. As a matter of fact, he handled all the business in the Benavides Independent School District, the depositing of checks as well as the cashing of checks, did he not?

A. All of them?

Q. Was he not the most useful representative, as far as depositing checks in the bank was concerned?

A. I guess I am not too sure about that.

Q. Didn't he deposit thousands, and hundreds of thousands of dollars every fall?

A. Whoever deposited them did.

Q. Well, do you know—who was the one who came, up to the time you left from 1946 or '45 up to the November of 1950, most of the time with most of the deposits? Was it Diego Heras?

A. That I could not say, because he didn't come to my window all the time.

Q. When such deposits were made at your window, who usually made them?

A. Diego.

Q. Tell the jury whether or not on coming to the bank, he ever went upstairs to the bookkeeping department?

A. When I was working in the bookkeeping department, he did.

Q. And when did you work in the bookkeeping department?

A. From 1941—I don't exactly remember. I worked between the two departments quite a long time.

Q. You would alternate?

A. I would know—I worked in the bookkeeping department until 1940—from '41 to '43.

Q. Did you, while working in the bookkeeping department, sometimes substitute as a teller?

A. I was relief teller, yes.

Q. Isn't it true there was a practice to have relief tellers from the bookkeeping department up until the time you left?

A. We used the girl downstairs as relief teller.

Q. Meaning Mrs. Groseclose?

A. Yes.

Q. Did any of the bookkeepers likewise at vacation time or other periods, say sicknesses, sometimes alternate?

A. They may have. I don't know.

Q. Did they or not relieve at noontime, sometimes, the bookkeepers relieving the tellers?

A. I don't know whether they did or not.

Q. All right. How often, when you were in the bookkeeping department, did you see Diego Heras?

A. Just every once in a while.

Q. Did you ever see him talking with Jewell Mayfield?

A. Yes, but he usually came to me to see about his account.

Q. Well, aside from that, did you ever see him talking with Jewell Mayfield?

A. Not any more than he talked to anybody else.

Q. As a matter of fact, he was friendly with several of the bookkeepers, wasn't he?

A. Yes.

Q. And everybody liked him up there in the bookkeeping department, didn't they?

A. I wouldn't go so far as to say that, no.

Q. All right. Did he bring anybody else there candy besides you?

A. I don't know.

Q. You don't know whether he brought candy habitually to the bookkeeping department, do you?

A. No, I don't.

Q. And what was the telephone conversation—first, about what time of day, if you know, was it, morning or afternoon? What banking hours did they have, nine in the morning until—

A. Two.

Q. What were the banking hours up until the time of your leaving?

A. Nine to two. We opened at nine. We went to work at eight.

Q. And do you recall whether, on this occasion when Diego came, and you, you used the expression "shortaged him," but you don't mean that. You mean you unintentionally failed to give him the money on account of being interrupted?

A. It is a banking term when you shortage somebody, and that is where you get it.

Q. You don't use the term as we lawyers use it. You—did you—was that in the morning or the afternoon?

A. Mr. Foreman, I believe it had to be at noon because both Mr. Donald and Mr. Williams were gone.

Q. Were they usually gone at noon?

A. Yes.

Q. How long was Mr. Williams usually gone at noon?

A. An hour.

Q. All right. And when he was gone at noon, did anybody get in his cage, or I should say his teller's booth?

A. No.

Q. What do you call those places where tellers were?

A. Teller's cages.

Q. All right. We will call it a cage.

When Mr. Williams was gone, did anyone take his cage?

A. He didn't have one.

Q. Oh. What did Mr. Williams do? Where did he sit there in the year 1950, say from 1948, 1949 and 1950?

A. He always—I believe he handled the exchange and the overseeing of tellers, and he helped me keep up with the vault money, and ordered the money, and if anyone, a teller, was absent, he worked the window, and he worked my window at noon when I was away.

Q. How many teller's cages do you have?

A. Three.

Q. And habitually, during the years 1947, 1948, 1949 and 1950, who were those respective tellers in cages 1, 2 and 3? Did you have a certain cage?

A. '47, '48, '49 and '50? I worked in 1, 2 and 3 and I finally wound up in No. 3 and in charge of the vault. That was the one close to the vault.

Q. And then Mr. Williams, at that time, was your assistant?

A. No, I was.

Q. You had charge of the vault, or—

A. Well, I was supposed—all of the money had to come from the vault and had to come through my window, if the tellers needed money. They had to check out through my window.

Q. Then I asked that question because of your expression, "he helped me with the vault money." Do you mean by that helping you in his capacity as your superior, or helping you under your direction?

A. Well, we had to check the vault and we had to have witnesses, two of us to count it, and check the vault, and all, and then we just wrote our names down as the vault being checked.

Q. Were you his senior? Had you been there longer than Mr. Williams?

A. No.

Q. He had been there longer than you?

A. Yes.

Q. Who else checked the vault besides you and Mr. Williams?

A. No one checked it.

Q. Well, were you the one who checked it? Did you check it every day?

A. No, sir.

Q. How often did you check the vault?

A. About once a month.

Q. In other words, you would count the bundles of money once a month?

A. Yes, all of it. We checked the big vault, and, you know, the tellers' cages. We checked the whole thing to

see how much money we had on hand in case we had to order money. We usually tried to keep a certain amount of money.

Q. And that would be the reason, and the only reason, for checking the money in the vault?

A. No, we checked it to see that it was there, too.

Q. That would be done how much, once a month?

A. Once a month, yes.

Q. In between times, no check was made to determine how much was there in the vault?

A. No, not in the big vault. That is where we kept our large currency.

Q. Did you have several little vaults?

A. Each teller had one, yes.

Q. Had a vault in the main vault?

A. Yes.

Q. Each teller had what they call sometimes a bank or a vault, and they would keep their business there. When would the tellers be audited, and for what period of time would the audit of the respective tellers be made to see whether or not they were short?

A. The bank examiners came in.

Q. How often did they normally come?

A. Twice a year.

Q. And except when the bank examiners came in, there would be no audit of the tellers as of each of their individual accounts, is that correct?

A. I guess not, but the only thing that often somebody would be absent, and somebody else had to work their window.

Q. Well, when someone would work someone else's window, would there be any kind of check when the person came back to whether or not, whether the person who

worked the window meanwhile had done everything according to Hoyle?

A. If they had any sense, they would.

Q. Well, they all had sense, didn't they?

A. Well, I hope so.

Q. Mrs. Fitch, except for such audit as each individual teller would make of whoever relieved him or her, did the bank itself, or the bank officers, or the head bookkeeper, or outside auditor undertake to determine that a teller's accuracy of the funds on hand, or the accountability, or whether all funds received had been accounted for by all the tellers?

A. Repeat that please?

Q. My question is, aside from such check as the individual teller would make when he or she had been relieved for an hour or two to visit or go to the telephone, or what else, aside from an individual check a teller might make on his or her substitute, in your interval at the bank, did its officials make a daily audit or accounting to determine whether or not in any 24-hour period each teller had accounted for, turned in to, or wherever it is turned in to, the receipts that might have come in that day, or if it was not turned in, was an audit made on each teller each day—I guess that is the simplest way.

Mr. Wilkey: Could we have that question read back?

Mr. Foreman: I will ask it again.

Was there an audit made of each teller each day by anybody?

A. If a teller was out of balance, she usually asked somebody else, one of the other of us, to come in and count it

for her, and that would be about the only thing. I mean, say I was out of balance. I would ask somebody else to come over and count my money, and we went in together and tried to get everybody in balance so we could go home.

Q. Except for the teller herself asking for such an audit, and unless she did of one of the other tellers, there was no such done?

A. No.

Q. How often, except for the visits—did you ever turn your cash in at the end of any period, week, month, or otherwise, to the main valut? Do you understand my question? Was a certain amount kept in each teller's cage each day, and as you got over that, did you turn that in?

A. Yes. Yes, that had to go in each days to the bookkeeping department.

Q. And the bank would take your individual word for whether or not you were in balance, without determining whether you are or not, whether you had the amount to start with, in other words?

A. That is true.

Q. And there was no internal audit whatever, and the only audit of the tellers was by the bank's examiner?

A. That is right.

Q. All right. Now, when you say that had to be at noontime, how long was it after noon before you had the telephone call from Diego Heras?

A. I believe that he had time to get over to San Diego and call me back, and get back, because I think Mr. Williams got back. I'm sure Mr. Williams got back, or when Diego came back, or I met him as I was going back out the door. He was just coming back from lunch or had gotten in the bank.

Q. My question did not have to do with whether or

not did Mr. Williams see him. By the way, have you, perchance, talked with Mr. Williams about whether or not he saw Diego come there the day you gave him the $1000 you had shorted him?

A. Did I have a chance to tell him?

Q. Did you talk to Mr. Williams?

A. Everybody laughed about it. We thought it was funny.

Q. My question is not what happened that day, but since you have commenced coming up here as a witness, have you talked with Carl Williams about the instance you went into detail about this morning, the $1000 shortage, and the box of candy? Have you or not discussed it with him?

A. Yes.

Q. On many or few occasions?

A. Oh, I don't know. I guess after we got out of the grand jury. I asked him if they asked him about it.

Q. You all discussed each other's testimony? Did you?

A. I asked him if they had asked him about that. That was it.

Q. I have no right to ask you what you said before the grand jury, but did you or Mr. Williams discuss the testimony you had given before the grand jury after you got out of the grand jury?

A. No.

Q. Have you discussed it since you have been here?

A. No.

Q. My question had to do with the length of time for the telephone conversation, and not his return to the bank. How long before you received the telephone call.

A. From the time he left the bank?

Q. Yes, ma'am.

A. Oh, I imagine about 15 or 20 minutes.

Q. And how long was it before he was back in the bank?

A. Just about that—it may—let me see now. Well, it all happened between twelve and one, or between one and two.

Q. Well, at any rate, it happened before the bank closed?

A. It all happened within an hour.

Q. And had you meanwhile—did you, over the telephone, tell him, yes, you would give him the money, to come back?

A. Well, I stopped. I checked my window. I counted the thousands. I didn't have to stop and count change. It didn't take a fraction of a second.

Q. Did you talk with him from your cage?

A. No, I didn't have a telephone in my cage. I had to go to the desk.

Q. How far from your cage?

A. Right behind it.

Q. Did you go back to your cage and count your money?

A. Yes.

Q. And you then found you were a thousand ahead?

A. Yes, but there was a package on the desk that I figured—I saw that right immediately that I hadn't put it in the drawer, and I figured then, when he told me he was short, I thought right off that was where it should be.

Q. There was a package on the desk?

A. Yes.

Q. Was that a package of money?

A. Yes. I just failed to put it in the drawer.

Q. On the desk in this—

A. Yes.

Q. Did the package contain a thousand dollars?

A. Yes.

Q. And that was the thousand you knew you had left out of his?

A. That is right.

Q. When you handed him that money, how did you hand it to him?

A. I put it in an envelope, but I didn't seal it. I didn't know I was supposed to.

Q. Did you ever seal any such envelope?

A. That is the first time I ever waited on him.

Q. Was that the only time you waited on him, or did you wait on him after that?

A. That is the only time I have ever waited on him.

Q. Normally, did he go to Mr. Williams' cage? But, Mr. Williams didn't have a cage.

A. That is right.

Q. Who were the ones who had the other two cages?

A. I believe Miss Erma Stanford, and I don't know. I don't know who was at that first one.

Q. Was it Christine Ray?

A. I believe so.

Q. Who else acted as tellers during that period of time, from 1947, '48, '49 and '50, other than the relief from the bookkeeping department or Miss Groseclose?

A. I am not too sure of them. I know there was a Mr. Peterson, but I don't know when, and I know there was a girl there, but I don't know when she left.

Q. Well—

A. I am just not too sure of them. There were quite a few of them.

Q. Quite a few. During the summer's vacation, did you hire extra help?

A. Not for the tellers, I don't think. No.

Q. Did you hire extra help upstairs, and bring the more experienced help down to fill in?

A. I think Mr. Williams did more of the relief.

Q. He had no certain number, no certain cage number?

A. No.

Q. Mrs. Christine Ray was Teller 1, Mrs. Stanford Teller 2, and you had cage 3?

A. Yes.

Q. All right. Now, with reference to the depositing of—making of deposit slips when certain customers came there, do you help them make out their deposit slips?

A. When we had to, we did.

Q. And the customer had made out his own slip—did you all refer to big depositors as industrial depositors?

A. Yes, I think so.

Q. Even though the BISD, being a large depositor, was called an industrial depositor?

A. No, that—I believe that was bonded. I believe that was a bonded deposit. I believe that is what we called the school funds.

Q. Well, as regards now any group of depositors or bank customers carrying large accounts, was there any designation to which a given appellation applied to such large depositors, regardless of the nature of the business or industry or endeavor in which such depositor was engaged? I will ask it again a different way. Did you group any of the large accounts under the term industrial, regardless of occupation?

A. I don't think so, not when I was there, not when I was in the bookkeeping department.

Q. Then, Mrs. Fitch, did the large depositors, the ones who deposited a great many checks, usually make out their own deposit slips?

A. Yes.

Q. Assuming a deposit slip would come in with hundreds of items tabulated on an adding machine tape, and it attached to the deposit slip with a gross amount, the total amount of all the items added, did you all undertake to re-edit that deposit slip and make out a new or different one, or did you accept it as such?

Mr. Bottler: Duplicitas, Your Honor.

The Court: What says the defendant?

Mr. Foreman: I would rather rephrase it than attempt to argue, it, Your Honor.

The Court: Very well.

Q. (By Mr. Foreman) Mrs. Fitch, what was your policy when a depositor brought in an involved deposit slip showing a great many items on it? Did you rewrite the deposit slip, or accept it as such? What did you do to it?

A. If there was cash involved, which some of them did have, the tellers counted that cash, and if there was an adding machine list made, say it was two or three deposit slips, we checked—we just sent them to the proof department and they want through a proofing machine.

Q. Did you make a cash ticket?

A. Yes.

Q. Tell the jury what a cash ticket is.

A. Well, when—this is pretty hard for me to explain.

Q. Start out with the color and the size.

A. When a person bring in a deposit and they have cash at the top, or I mean they have cash, and then they have a list of checks, you make out your cash ticket. You don't send the money to the bookkeeping department. You keep that down in your cash drawer. You make out a cash ticket saying that you got that much cash, that added to your total amount of checks would be the total amount of the deposit. If there is a cash deposit, all cash, you put your teller's stamp on it just like if you pay cash out on a check. Say you come to my window and I give you cash on a check, we had to stamp that check as being paid cash. That is how.

Q. Yes, ma'am, and isn't the reason for making the cash ticket simply to keep your books straight, so as to know how much cash to charge you with, how much you are charged with, and to turn in at the end of the day?

A. That is true.

Q. And it is not an inconvenience to the customer, because it is not the customers business how you keep your books?

A. Well, I don't guess so. They certainly want to know at the end of the month if everything is in balance, or they will know it 15 or 20 minutes after they make the deposit.

Q. You don't give the customers a copy of that cash ticket?

A. No, sir.

Q. The deposit slip, suppose it had some cash and some checks, would you put your seal on it, your stamp?

A. No.

Q. Only when it is all cash?

A. When it is all cash, just like when you cash a check.

Q. Then, suppose that the depositor—I am only asking you about your own individual practice as a teller there. Suppose the deposit slips had all of the items, including the cash, tabulated on the adding machine slip. Would you re-edit that deposit slip tendered you by the depositor, or simply make a cash ticket? You don't initial or write, or whatever else you might do with the deposit slip?

A. If they had checks listed as cash?

Q. No listing at all, but simply an adding machine item of an indefinite number of entries. Would you re-edit the deposit slip you handed back to the customer, the deposit slip as distinguished from the cash ticket?

Mr. Wilkey: Your Honor, we object to "re-edit." Perhaps I misunderstood counsel.

Mr. Foreman: I think I used re-edit incorrectly, and I appreciate the suggestion.

Do you reissue, or do you issue a new, I should have said, deposit slip? Do you go through there, make out a new one, or simply show the total amount and show the cash ticket, and hand back the deposit slip as it had been presented to you?

A. Often, if they weren't listed, you might do that.

Q. Now, you say they were not listed?

A. If the checks were not listed. Say they just had one total, you might go into that.

Q. Suppose the check, without being l ed as individual checks, giving the maker or payee or b k upon which drawn, or the date of same, suppose the amount of the checks were just pumped out on an adding machine, and

they appeared as to the total of the checks on the adding machine slip, but not other listings, and included in that was cash and it likewise was added on the adding machine slip, would it be your duty, was it your practice as teller, to go back and segregate, or change, or I will say edit instead of re-edit, that deposit slip?

A. No, but it wouldn't take over five or ten minutes after it got upstairs, it would be sent back and you would find out about it.

Q. At any rate, it was not your duty to change or make a new deposit slip, no matter how they came in, and is that true or not, so long as they showed how much cash you received to the bookkeeping department?

A. Sometimes if we couldn't—if you couldn't read them, we would go ahead and change them. If we couldn't read the handwriting, we made it easy on the bookkeeping department.

Q. But that would be an exception rather than the rule, when you would change a deposit slip as presented you by a customer?

A. Well, yes. It all depended on whether you had time or not.

Q. My question had to do with supposing they were there on an adding machine tape, cash and checks. You could read that, and the bookkeeping department could too, could it not?

A. Yes.

Q. And in that event, there would be no reason for your changing the deposit slip itself?

A. That is right.

Q. As long as the gross amount was there, cash or checks, all they would care was the total of it and all

the bookkeeping department cared was what was cash and what was checks?

A. Yes.

Q. And that was your practice while you were there from 1943 to 1950. Was that when you became a teller?

A. I don't know the exact time. I was relief teller so long, off and on, but I do know I was the teller the last time I went back to work. I was the teller for the last four years. I know I was a teller at least four or five years.

Q. Then the last four or five years, from 1945 or 1946 to 1950, the only time you would alter or edit or change a deposit slip would be when you thought it was illegible, and you had the figures before you and you would correct it so the bookkeeping department could interpret it?

A. That is true.

Q. Otherwise, whether cash or adding machine tape or checks, you would give the customer credit for whatever he or she deposited, or it, if it was a corporation?

A. Yes.

Q. And make your simple cash slip and send it to your bookkeeping department?

A. That is correct.

Mr. Foreman: Thank you.

The Court: Are we near the end of cross examination?

Mr. Foreman: I would like to confer with counsel, and perhaps we have some time—

The Court: Very well. We will have a recess, and you will have that opportunity. Court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Mr. Foreman: No more questions, Your Honor.

The Court: Very well, sir.

3-639 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) Mrs. Fitch, I have just two or three here. Would you tell the jury just what you did at the end of that day in the teller's cage in regard to balancing out the cash before you closed up for the day, after the customers had left the bank?

A. We had to run all of our tickets, cash paid out, that we paid out for the day, and the cash that we took in for the day, and the cash we had on hand plus the cash that we had the day before.

Q. Did you total those up in some way?

A. Well, I can't remember.

Q. I won't ask the exact details, but would you give me—did you make any total of the thing?

A. You had to pick up your cash you had the day before and subtract what you took out, add what you had on hand and took in.

Q. Was that called balancing out your teller's cage?

A. Yes, sir.

Q. Now, then, did you make any record of those figures each day?

A. We had a cash book we wrote that up in.

Q. Besides putting it in the cash book, did you transmit the information to any other person?

A. To the bookkeeping department.

Q. At the end of each and every day?

A. Yes.

Q. When you had cage 3 and were out to lunch, or for any other reason out of your teller's cage, who was it, there in 1949 and 1950, who normally relieved you there in cage 3?

A. Mr. Williams.

Q. In regard to deposit slips (which customers to the bank might bring in to make a deposit to your cage, if, on the deposit slip, there was only one item written, and that on examination of the deposit you found it contained both checks and cash, what, if anything, did you do in regard to that deposit slip?

A. If there was one total at the bottom?

Q. Yes.

A. And it had cash and checks?

Q. In the deposit.

A. In the depost.

Q. But not written on the slip?

A. But not written on the slip?

Mr. Foreman: We object. The witness should do the answering. He is even helping her with each next word in his ardor and enthusiasm.

The Court: Objection sustained.

Mr. Wilkey: Your Honor, I was putting to her the factual situation, and she was repeating it.

Mr. Foreman: She was repeating what he said, word for word.

Mr. Wilkey: That was a hypothetical question I was putting to her.

The Court: Let's have order, you may proceed with your question.

A. If I received a deposit slip with one total at the bottom. It contained cash and checks. I took the total at the bottom, subtracted after I had counted the cash, I subtracted that amount of cash from the total. I listed my cash, and then I said check list so much, and left the total.

Q. All right, and after you had done what you said that you did, how many sparate figures did you have listed on the face of the deposit slip?

A. Three.

Q. What were they?

A. Cash, check list, and total.

Q. I see, All right. No further questions.

3-641 RECROSS EXAMINATION

Q. (By Mr. Foreman) Mrs. Fitch, tell the jury whom you have talked with since you left the witness stand a few minutes ago at 3:15. It is now 3:25, and we have been back in here about three minutes. I beg your pardon, it is 3:40.

The Court. And we have been back five minutes.

Q. Tell us whom you have talked with since you left that witness stand, and before you got back on there?

A. Mr. Wilkey.

Q. That is the man who just questioned you?

A. That is correct.

Q. And where did you talk with Mr. Wilkey between the time you left the witness stand a while back and the time you got back on the witness stand?

A. Here.

Q. At the witness stand, or in the hall, or in his office?

A. I didn't go to his office.

Q. Where were you? Where were you and he, in what part of the court house?

A. I was right here.

Q. You mean you still remained on the witness stand?

A. No.

Q. Where were you?

A. Right here.

Q. In this courtroom or in the hall?

A. Yes.

Q. Thank you, Mrs. Ftch, and did you talk just like you have talked now to him?

A. I explained how it is done.

Q. Now, your testimony is different, is it not, madam, with reference to whether or not you changed, edited, or in any way altered a deposit slip made out by a person with a large entry? Is your testmony different since you resumed the stand than it was the last four or five questions before you left the stand?

A. Don't you think you asked that question about five or six times different so you could confuse me?

Q. Regardless of that, little lady, did you or not, just before you left the witness stand, tell this jury that when a long—

A. I didn't know what you were talking about. You asked it to me in different ways, and I tried to explain to you about deposit slips when cash was involved. The last time, I don't even think you mentoned any cash being involved.

Q. At any rate, your testimony is now that if you did testify directly opposite immediately before recess to what you testified to after your conversation with Mr. Wilkey after recess, you were confused?

A. You confused me on that issue when you said there was no total at the bottom, and there was a list. You did not mention cash, as far as I remember.

Q. I understand. Then, if there is a diversity, it is because I confused you. My questions were not plain, and I believe you stated, even, that I deliberately confused, did you not? Isn't that what you said?

A. That is the way I feel about it.

Q. You have a sort of resentment to me, do you not?

A. No, I think you are a challenge to me.

Q. You think I am what, please, ma'am? I didn't catch the word. A challenge? I am a challenge to you?

A. Yes.

Q. I see. Then you consider it a contest with me on one side and you on the other, is that what you mean?

A. Not exactly, no.

Q. Isn't it relatively that? Would you, if you have to assume sides in this, you choose to assume sides against me?

A. I don't think that question even pertains to this trial.

Mr. Wilkey: Your Honor, I submit the witness has a better sense of relevancy to the case than defense counsel, and ask that the question be stricken.

Mr. Foreman: May it please the Court, I object to the argument.

The Court: I will not strike the question for that reason. I think the remark is improper. Do you have any other objection to it.

Mr. Wilkey: It is argumentative, Your Honor. I was starting to rise when she answered. The question is entirely argumentative, and, as she said, irrelevant.

The Court: I don't want either witness or counsel to be passing on the relevancy of questions.

Mr. Foreman: May it please the Court, I am only developing it so that the jury may see if there exists animus, bias, or prejudice on the part of the witness.

The Court: You may explore it.

Mr. Foreman: I object to Mr. Wilkey's reflection on counsel, as to how much smarter the witness is than him, and how much better judge of the relevancy she is as to what the attitude may be in the case.

The Court: You may continue. The objection is sustained, and I will instruct the jury not to consider the remarks of Government counsel.

Q. (By Mr. Foreman) Mrs. Fitch, did you state to questions, when defense counsel in this case commenced asking you questions, that it is a challenge to you?

A. That is what I said.

Q. And has that been your attitude throughout your testimony?

A. I have been trying to keep from getting confused with your questions, but you seem to keep on trying.

Q. And you think that my motive is to confuse you?

A. That is right.

Q. Have you had that attitude since you took the witness stand?

A. I didn't at first, no.

Mr. Foreman: All right. That is all, Mrs. Fitch.

3-646 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) Mrs. Fitch, do you have any doubt in your mind as to what your normal practice was in handling deposits when you worked in the bank?

Mr. Foreman: We object to that as self-serving, as repetitious, as arguments, asking her if she is sure she is right in what she told him while ago.

The Court: It is repetitious, isn't it, Mr. Wilkey?

Mr. Wilkey: Yes, it is repetitious, but he went into the—

The Court: I will sustain the objection.

Mr. Wilkey: Very well. No further questions, Mrs. Fitch.

The Court: You may step down.

3-647 CHRISTINE RAY,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

3-647 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, please, ma'am?

A. Christine Ray.

Q. Where do you live?

A. Alice, Texas.

Q. How long have you lived in Alice?

A. Twenty-nine years.

Q. Where are you employed?

A. The First State Bank.

Q. How long has the First State Bank been in existence?

A. Since July of 1954.

Q. Did you work for a bank prior to that time?

A. Yes, I did.

Q. Which bank was that?

A. The Texas State Bank.

Q. Over what period of time did you work for the Texas State Bank of Alice?

A. Approximately 12 years.

Q. And when did you begin working there?

A. In November, 1941.

Q. And how long were you with the Texas State Bank of Alice?

A. Until July of 1954.

Q. What occurred at that time?

A. In July of 1954, the Texas State Bank of Alice went into liquidation.

Q. Did you or not continue working there in the same building?

A. Yes.

Q. For what bank?

A. The First State Bank.

Q. All right. In the years 1949 through 1953, what position were you in with the Texas State Bank of Alice?

A. Teller.

Q. And at any time during that period, were you the teller who handled the vault cage?

A. Yes.

Q. And at the time you first became teller handling the vault cage, which teller's cage was it?

A. No. 3.

Q. Can you recall about what time it was you took over cage 3?

A. As well as I remember, it was in the latter part of 1951.

Q. Can you recall your taking over cage 3 in relation to the time of any event which occurred there in the bank?

A. I took over No. 3 when Mr. Williams left the bank.

Q. I see. Do you know Mr. Tom Donald?

A. Yes.

Q. Can you identify him?

A. Yes.

Q. Will you point him out, please, ma'am? He is the gentleman who just stood?

A. Yes.

Q. What was his position in the bank when you were there from the years 1949 through 1953?

A. He was cashier.

Q. Who was the man from whom you received your operating instructions as teller?

A. Mr. Donald and Mr. Williams.

Q. What was Mr. Williams' business during that time?

A. Head teller.

Q. Was the Benavides Independent School District a depositor in the Texas State Bank of Alice during the years 1949 to 1954?

A. Yes.

Q. Did you ever have occasion to pay any checks drawn by the BISD on its accounts?

A. Yes.

Q. Did you pay them singly or in groups, or both?

A. As well as I remember, both.

Q. Do you ever remember paying out cash from your teller's cage on BISD checks?

A. Yes.

Q. Did you ever pay out any cash on any groups of BISD checks?

A. Yes.

Q. When you paid out cash on those groups of checks, do you recall who presented those checks for payment?

A. Yes.

Q. Who was that?

A. Mr. Donald.

Q. Mr. Tom Donald?

A. Yes.

Q. During what year or years was it Mr. Donald presented those checks to you for payment?

A. As well as I recall, it would be some from the time I went into No. 3 window, which was 1951, until the early part of 1954.

Q. Can you recall anyone besides Mr. Donald presenting any checks to you, any groups of BISD checks to you for payment?

A. No.

Mr. Foreman: Did she say the early part of 1951?

A. When I went into No. 3 in the early part of 1951.

Q. Let me get this straight. What time was it that you went into—what time of the year was it you went into teller's cage No. 3?

A. I think it was in October.

Q. Of what year?

A. 1951.

Q. And when was it in relation to when Mr. Williams left?

A. I believe Mr. Williams left in October of 1951, and that is when I went into that window.

Q. In other words, you took his place?

A. Yes.

Q. If you stated the early part of 1951 a minute ago in answer to one of my questions, was that correct or not?

A. I am sorry. I have lost tract of which question.

Q. You are sure it was October, or about that time?

A. I went into No. 3 in October of 1951.

Q. With reference to this group of checks Mr. Donald would bring you, were those checks totaled when he would bring them to you?

A. I don't recall whether there was a tape. If there was, I accepted the figure and ran another tape for my own information.

Q. And when he would present those checks to you, what did you do?

A. Gave him the cash on them.

Q. Can you recall the approximate amounts that those groups of checks would total?

A. No, sir, offhand I can't.

Q. When Donald would present those checks to you, did he come around to the front of the cage like a customer, or did he come into the back of the cage?

A. It was customary for him to come to the back of the cage.

Q. I see. After Mr. Donald—

Mr. Foreman: May it please the Court, we ask that this testimony be limited to whichever one of the defendants and to whatever counts they claim it applies, and we object on behalf of each of the defendants. We submit at this time, it should be limited to B. F. (Tom) Donald and the Texas State Bank of Alice, and as to each and all of the other defendants, we object to its being received into evidence.

The Court: What says the Government?

Mr. Wilkey: The Government offers this as against all defendants on all counts of the indictment.

The Court: Does it apply to the alleged general scheme to defraud and the alleged conspiracy?

Mr. Wilkey: In regard to the scheme to defraud in Counts 1 through 19, and in regard to the alleged conspiracy in Count 20.

The Court: Objection overruled.

Q. (By Mr. Wilkey) After Mr. Donald picked up the cash from you there in exchange for those groups of BISD checks, what did he then do?

A. I don't know.

Q. Do you know where he took the money?

A. No, I do not.

Q. All right. When those bundles of checks were presented to you for payment, did you or not put a teller's cash stamp on it?

A. I did not.

Q. Was it the normal operation of the bank when you paid cash for checks to put your teller's cash stamp on it or not?

A. Yes, it was a normal operation.

Q. On what checks which were cashed there did you not put your teller's cash stamp on them?

A. Benavides Independent School District.

Q. If you sent checks which had been paid by cash in the normal course of business through the proofing department without a teller's cash stamp on them, paid in the normal course of operation, what would happen?

A. They would be returned to me for my cash stamp.

Q. Were the BISD checks ever returned to you for your teller's stamp?

A. Yes, the first time.

Q. What did you do the first time?

A. I returned them to the proof department and told them I had had instructions to send them on up without the cash stamp.

Q. Who gave you the instructions to send them up without the teller's stamp?

A. Mr. Donald.

Q. Did you ever receive any instructions as to whose signature, both as maker and countersignator, were to be on those BISD checks?

A. Yes, sir.

Q. And what were those instructions in regard to countersignature and to signature?

A. That we were not to pay any of the checks without George B. Parr's signature.

Q. Do you recall who signed as maker of the check in the lower righthand corner on the face of those BISD checks?

A. I don't remember any specific one. I do remember some of the names that were on there.

Q. Do you recall some of the signators?

A. Yes, W. M. Benson.

Q. All right.

A. And I believe Octavio Saenz.

Q. All right.

A. And Oscar Carrillo and Diego Heras.

Q. Do you know Mr. Oscar Carrillo?

A. Yes.

Q. Did you ever see him in the bank?

A. Yes.

Q. Did you see him in the bank during the time from October or November, 1951, during that time and the years 1952 and 1953?

Mr. Foreman: May it please the Court, we object to that as leading and suggestive.

The Court: Well, I suggest she has stated she has seen him in the bank. I suggest you ask when, if she can remember.

Q. (By Mr. Wilkey) When, if you recall, did you see Mr. Oscar Carrillo, Sr. in the bank there?

A. I couldn't give a specific date.

Q. I am not asking for a specific date, you understand, Mrs. Ray, but I am asking if you can give a period of time, or year or years, in which you might have seen him there?

A. No, I'm afraid I couldn't.

Mr. Wilkey: No further questions, Your Honor.

3-656 CROSS EXAMINATION

Q. (By Mr. Foreman) As a matter of fact, Oscar Carrillo had an account in that bank, did he not?

A. As well as I remember.

Q. And as a matter of fact, he had at least two notes he owned and paid on periodically, did he not?

A. I didn't work in the note department, Mr. Foreman. I wouldn't know.

Q. You don't know whether he did or not?

A. No, sir.

Q. Mrs. Ray, have you seen the signature cards for the Benavides Independent School District here at Houston, the one upon which who were authorized to sign signatures, since you have been here?

A. No, sir.

Q. Do you know whether they were here or not from any other information you may have had heretofore?

A. No, sir.

Q. Now, with reference to when you were told that hereafter BISD checks must be countersigned by George

B. Parr, do you know that date or approximate date when this instruction was given you?

A. No, sir, I surely don't.

Q. Now, when did you first go to work at the bank, Mrs. Ray?

A. In 1941.

Q. And from 1941 until about 1950, who countersigned the checks of the Benavides Independent School District, if you know?

A. I am sure I couldn't say.

Q. Is it your recollection that at any time during those nine years George Parr ever countersigned any such checks? Speaking of the period up to 1950, do you have any recollection of his ever countersigning a check before 1950?

A. No.

Q. Is it true that W. M. Benson, sometimes called Willie Benson, countersigned the checks during that period of time, to your best knowledge?

A. It was some time back. It was sometime during that time.

Q. And when Mr. Parr commenced countersigning the checks, Mr. Benson ceased countersigning the checks, did he not?

A. As well as I remember, yes.

Q. And is it your recollection that you now recall that you can remember what years it was you cashed checks which Mr. Donald presented you, and you gave him the cash on them? Can you remember the years now?

A. It was 1951 until 1954.

Q. Weren't you asked the question at the former trial of this case in November as to when it was Mr. Donald

gave you checks to be cashed, and you stated that you could not remember as to what years it was?

A. Well, I also stated that I went in that window in 1951, and the bank was liquidated in 1954.

Q. Then you are placing—I am not challenging the correctness of your testimony, little lady, but only as to whether or not something may have happened to refresh your memory. Weren't you asked the question at the former trial of this case in November, when was it that Mr. Donald gave you checks upon which you gave him the cash, and didn't you state, "I do not remember what years it was?"

A. Yes, sir.

Q. You did. Now, you do remember, don't you?

A. After thinking it over, yes.

Q. And talking it over with whom?

A. No one. Through a process of elimination.

Q. All right. Have you talked over your testimony with anyone since you have been here at the trial before you took the stand?

A. My testimony?

Q. Or the case. The facts as you have revealed them. I don't mean, did they say, "I am going to ask you this, and you say this, I will ask this and you must answer this." I don't mean that. I mean did you talk over your testimony? Has it been gone over with you by either Mr.—anybody?

The Court: I suggest you answer the question. State anyone you may have discussed the case with.

A. With Mr. Wilkey.

Q. When was that, please, ma'am?
A. Yesterday morning.
Q. And what time was it?
A. About 8:30.
Q. Was that by appointment?
A. No.
Q. I mean by that, had he asked you to be here at court an hour early so he could talk with you about the case?
A. My instructions by letter were to be here at 8:30. There was nothing said in the letter about any instructions.
Q. You have not been here every morning at 8:30?
A. No, I have not.
Q. How did you happen to be here specifically at 8:30, Wednesday, May 8, instead of 9:30 when court starts?
A. Because I received a letter instructing me to be here at 8:30.
Q. Oh, yesterday was your first day here?
A. Yes.
Q. I am sorry. I was under the impression you were here before, and you reported to Mr. Wilkey and went over your testimony with him?
A. Yes, sir.
Q. Was Mr. Bottler there?
A. No, Sir.

Mr. Foreman: That is all, Your Honor.

Mr. Wilkey: No further questions.

The Court: You may step down.

3-660 BERENICE HICKMAN,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

3-660 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, please?
A. Berenice Hickman.

The Court: What is the name, please?

A. Berenice Hickman.

The Court: I am going to ask you to speak out louder so everyone in the courtroom can hear you.

Q. Where do you live, Mrs. Hickman?
A. In Alice, Texas.
Q. And how long have you lived in Alice?
A. Oh, about 18 years.
Q. And are you employed in Alice?
A. Yes, I am.
Q. And by whom are you employed?
A. The First State Bank.
Q. How long have you worked in the First State Bank?
A. Ever since it was organized.
Q. Prior to the time the First State Bank was organized, were you employed?
A. Yes, I was.
Q. For whom?
A. The Texas State Bank.
Q. When did you begin work for the Texas State Bank of Alice?

A. In August, 1950.

Q. And what kind of work did you first perform for the Texas State Bank when you went to work for them there?

A. Typing.

Q. What did you type?

A. School reports.

Q. Do you recall typing any Benavides Independent School District reports?

A. Yes.

Q. I hand you what has been identified here as Exhibit 1, and ask you to look at it, if you will, ma'am, and tell me what that is?

A. That is the school report.

The Court: Now, I want to again instruct you to speak out clearly, and you probably have the same feeling most witnesses do, when the attorney stands by your side, you get the feeling you are carrying on a private conversation with him, but it is not. It is testimony and important that everyone hear you, so I want you to speak out clearly and distinctly.

Q. (By Mr. Wilkey) Do you recall typing reports like that?

A. Yes.

Q. Would you explain, if you would, how you went about typing those reports? First of all, before answering that question, who was your immediate supervisor there in the bank?

A. You mean the upstairs?

Q. Where you worked when you first went to the bank.

A. Mrs. Mayfield.

Q. Miss Jewell Mayfield?

A. Yes.

Q. Now, who showed you how to prepare the BISD reports?

A. Miss Mayfield?

Q. All right. Would you describe just how you went about preparing the reports, what you put in them, where you got the information from, and so on?

A. I had those certain forms, just like this, and I went according to how they were paid.

Q. What do you mean, according to how they were paid?

A. However they were on the bank statements. I went according to the bank statements.

Q. What is "they," you are referring to, "they"?

A. I mean the checks.

Q. The checks of the BISD?

A. Yes.

Q. Now, when you were preparing those, typing them off, what did you have before you there to copy the information from?

A. The checks.

Q. Anything else?

A. The checks and the bank statement.

Q. The checks and the bank statement. All right. Did you arrange the checks in any particular order?

A. Well, according to what funds they were.

Q. All right. You prepared those, then, by each fund separately, is that what I understand you to mean?

A. Yes.

Q. All right. Now, then, taking one fund at a time, did you cover one month or more than one month?

A. One month.

Q. You took one fund for one month, is that correct?

A. Yes.

Q. All right. Taking the figures and the bank statement for one BISD fund for one month, what did you then do?

A. I would type it on those sheets right here.

Q. In what order did you arrange the checks?

A. However they were presented on the statement.

Q. On the bank statement itself?

A. Yes.

Q. All right. Now, then, looking at one of the pages here in the report you have, it doesn't matter which page, what is that first column?

A. Date of the voucher.

Q. By voucher, what do you mean?

A. The check.

Q. Voucher and check to you are synonymous?

A. Yes.

Q. All right. Is that the date that appears on the check itself, that it was made out?

A. It is on the face of the check.

Q. All right. What is the next column?

A. The number of the check.

Q. And then what is the third column?

A. From who it was received and to whom paid.

Q. Is that name there the same name as appears on the face of the check?

A. Yes.

Q. All right, and then what is the fourth column?

A. For what paid.

Q. And where did you get the information as to what paid?

A. It was usually written on the check.

Q. And the fifth column, what is that?

A. That was the date it was paid.

Q. And the sixth, or last column, what is that?

A. The amount of the check.

Q. Where did you get that information?

A. It was on the face of the check.

Q. Okay. Now, then, after you typed up these reports —by the way, was the typing on these reports done every month, or was it done all at once at sometime during the year, or just how?

A. Well, I typed them during the month.

Q. I see. On each month's statement as they would come in?

A. I tried to keep them up.

Q. All right. Who, if anyone, worked with you on the typing of these reports?

A. Mrs. Daniel and Mrs. Mayfield.

Q. Is that Mrs. Mildred Daniel?

A. Yes.

Q. In the performance of your duties there, did you ever operate the microfilm machine?

A. Yes, I did.

Q. And what did you do with the microfilm machine?

A. I photographed everything that went through the bank.

Q. What was it you photographed?

A. The transit and the checks that belonged to the bank.

Q. By checks that belonged to the bank, do you or do you not include the BISD checks from which you made up these annual reports?

A. Yes.

Q. Were they photographed by the microfilm machine?

A. Yes.

Q. Do you photograph the front or the front and back?

A. Front and back.

Q. Now, then, after you photograph the checks on the microfilm machine, what did you do with the film?

A. I sent it out to be developed.

Q. Where did you send it?

A. I believe they came to Houston.

Q. Did you take it somewhere there in the town, or did you mail it?

A. We mailed it.

Q. And what was the purpose of that, of mailing it?

A. Well, so that we would have a record of it.

Q. All right. Now, how long was it after you mailed it out to be developed before it would come back to you?

A. Two or three days.

Q. And after it came back, what did you do with the film?

A. Filed it in the vault.

Q. What size is this film that you are talking about, Mrs. Hickman?

A. Well, it is on a spool.

Q. And about how big are those spools? Could you indicate with your hands?

A. (Indicating.) I think about that large.

Q. How many inches would you say that is, just for the record here?

A. I don't know.

Q. The diameter, how wide is the spool across?

A. I don't know a thing about inches, or anything like that.

Q. You do not want to make an estimate?

A. No.

Q. Where did you put it in the vault?

A. We had a drawer for the film.

Q. Did you have one drawer, or more than one drawer?

A. There was more than one drawer.

Q. And what kind of drawers were these?

A. Well, just drawers in filing cabinets.

Q. Could you describe the size of the drawers and how the film was filed in the drawers?

A. They were filed according to the number on the box.

Q. Were the numbers on the boxes serially?

A. They ran in line.

Q. Consecutively?

A. Yes.

Q. In a drawer, about how many rolls of film could be found?

A. I don't know.

Q. Well, explain if you will, describe it with your hand, if you need to, how they were staked in the drawers?

A. They were divided into little compartments about this wide (indicating), and we would file them, one right behind the other.

Q. How many compartments were in each drawer?

A. I believe there was two or three.

Q. All right. Now, where was this—in which vault was this microfilm?

A. In the upstairs vault.

Q. All right, when the film came in, before putting it in the vault, did you do anything with it?

A. We entered it in a logbook.

Q. I will show you what has been identified here as

Government's Exhibit 106, and ask you if you can tell me what this is?

A. This is the logbook.

Q. The logbook for what?

A. For recording statements—I mean the film.

Q. For recording the film. All right. Would you explain to me what this lefthand column of figures is here?

A. The numbers we had on the boxes.

Q. You will have to talk a little louder, please. I am close by and you are tending to talk just to me. Will you repeat that, please?

A. The numbers we had on the boxes.

Q. What is the next column in the book?

Mr. Foreman: We object to this testimony on behalf of all the defendants except the Texas State Bank of Alice, and ask that it be limited by the District Attorney—not received as original evidence as to all counts as to all of the defendants. This is a record of the bank, of the bank only, and there has been no predicate laid to establish or connect any of the defendants except the bank with this testimony.

The Court: What says the Government?

Mr. Wilkey: Your Honor, this will be connected up later, and we do offer it against all defendants on all counts.

Mr. Foreman: We object to it being offered as not being timely. The predicate not having been laid, and being offered before it becomes admissible.

The Court: Not timely in what respect?

Mr. Foreman: In that until it has been connected up, it should not be received, if it should be received at all. It should not be received until it has been connected, and made pertinent, germaine, or a proper predicate laid for its introduction.

The Court: Well, it becomes difficult where you must bring together various bits of evidence to prove a scheme or artifice to defraud or to prove a conspiracy, that objection may be made to any of it. It may not all be connected up until it all comes together, so how would any of it then be admissible?

Mr. Wilkey: May it please the Court, I could answer that question as to this eveidence but in doing so, it would—

Mr. Foreman: He should not do so any more than the Court should let the evidence in in the presence of the jury.

The Court: Objection overruled, and it will be admitted as to all counts as to all defendants. Let me ask the District Attorney, does it relate in any way to the charges against the other bank, the San Diego bank?

Mr. Wilkey: Yes, Your Honor, we will offer evdence whch we will submit—

Mr. Foreman: If he is going to state what his evidence is going to be, we would rather it be done out of the hearing of the jury, or at the Bench.

The Court: Very well, it will be admitted as to all defendants.

Q. (By Mr. Wilkey) Now, Mrs. Hickman, I had asked you what is the second column here?

A. That is where we wrote down if it was a statement film or the other film.

Q. What is the statement film and what is the other film?

A. If it was left blank, it was daily film, and we didn't write daily down here.

Q. Talk louder.

A. It was a daily film, we didn't write daily. If it was statement, we stated it was statement.

Q. On which film were the checks microfilmed on?

A. Daily.

Q. On which film was the statement photographed?

A. The statement.

Q. What is this column here?

A. That is the date it was sent.

Q. Sent out to be developed?

A. Yes.

Q. What is the last column here?

A. The date it was received.

Q. And when it was received, where was it put?

A. In the vault.

Mr. Wilkey: No further questions, Your Honor.

Mr. Foreman: No questions.

The Court: Very well, you may step down.

3-673 MILDRED DANIEL,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

3-673 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, please?

A. Mildred Daniel.

Q. Where do you live, Mrs. Daniel?

A. Alice, Texas.

Q. How long have you lived there?

A. About 20 years.

Q. Where are you employed?

A. The First State Bank.

Q. And before being employed by the First State Bank, where did you work?

A. The Texas State Bank.

Q. The Texas State Bank of Alice?

A. Yes, sir.

Q. What did you do at the Teras State Bank of Alice?

A. Well, I worked in the bookkeeping department some and in the proof department.

Q. What were you doing in the years 1949 through February of 1954?

A. I was working in the proof department.

Q. Of the Teyas State Bank of Alice?

A. Yes, sir.

Q. What did you do in the proof department?

A. Well, you examine the items that come up from the tellers to see if the endorsement is initialed, and the checks dated properly, and are endorsed properly.

Q. All right. Now on stamps—on checks which come up from the teller's cage, which are presented at the cage for cash, does that check bear or not bear, customarily in the bank when you were there, a teller's cash stamp?

A. It does.

Q. Were there any checks which came up during those years, which did not bear teller's cash stamps?

A. Some.

Q. Which ones were they?

A. Well, Benavides Independent School District was the main ones that I ever saw.

Q. If other checks besides the BISD came up without teller's stamps on them, what did the proof department do in the normal course of business?

Mr. Foreman: May it please the Court, I object as leading, suggestive, and not predicated upon the testimony of this witness. She hasn't stated invariably that practice prevailed. She stated the main ones, and he has carried it further and said if any others came up and the suggestion was there were others from time to time. He hasn't shown there was not others.

Mr. Wilkey: All right.

The Court: Objection sustained.

Q. (By Mr. Wilkey) Besides Benavides Independent School District checks, can you recaall any others which were presented there and paid which did not have teller's cash stamps on them?

A. I can't recall any unless it was returned to the teller and then they stamped it.

Q. Then what was your normal practice in regard to checks which came up without teller's cash stamps on them?

A. Return them to the teller for their cash stamp.

Q. Did you do this in regard to BISD checks?

A. Yes, sir. I returned them to the tellers.

Q. If they did not have the teller's cash stamp on them?

A. Yes, sir, and they returned them to me and told me they didn't have to have a cash stamp.

Q. Oh, and then after you were told the BISD checks would not to have a teller's cash stamp on them, what procedure did you follow?

A. Sent them to the proof machine.

Q. You did not sent them back downstairs?

A. No, sir.

Q. I show you what has been identified as Government's Exhibits 17-A through P, and ask you if you have seen any checks like this before?

A. Yes, sir.

Q. What are those checks?

A. Benavides Independent School District.

Q. Can you tell by looking at them whether or not they have been paid at your bank?

A. It has been canceled, this one has our cancellation on it.

The Court: Is anyone having any difficulty hearing? I am going to ask that you speak out more clearly, and I want to tell you, as I have told others, that when the attorney stands by you, you undoubtedly get the feeling you are carrying on a private conversation with him and you let your voice fall, but you are giving testimony in court and it is important that everyone hear you, so will you speak out clearly.

Q. What is this perforation here?

A. That shows the date it was paid.

Q. Anything else?

A. And the bank number.

Q. Do you recognize the signature here in the countersignature place on these checks?

A. It looks like Mr. G. B. Parr's signature.

Q. Is G. B. Parr George B. Parr?

A. Yes, sir.

Q. Are you familiar with his signature?

A. Yes, sir.

Q. Have you ever seen any checks like this with his signature in this countersignature place?

A. Yes, sir.

Q. Do you recognize this signature here in the position of the maker of the check?

A. Yes, sir.

Q. Who is that?

A. Diego Heras.

Q. Have you seen checks like this before, with his signature in this position?

A. Yes.

Q. Are you familiar with the signatures of Mr. Oscar Carrillo?

A. I think so.

Q. I show you what has been identified as Government's Exhibit 107 and ask you if you recognize this signature here?

A. Yes, I think that is Mr. Carrillo's signature.

The Court: I didn't understand the answer.

A. I think that is Mr. Carrillo's signature.

Q. Do you recognize this signature up here above it?

A. Yes, sir.

Q. Who is that?

A. Octavio Saenz, I believe is his name.

Q. And this is a check drawn on what account?

A. The Benavides Independent School District local maintenance fund.

Q. Have you seen checks like this before come through the bank with Mr. Saenz's and Mr. Carrillo's signature on it?

A. Yes, sir, I think so.

Q. Do you recognize this signature here on the countersignature?

A. Well, I don't know whether it is his signature or not. I mean, I don't know for sure if it it his signature.

Q. Whose signature does that purport to be?

A. R. W. Milligan.

Q. All right. I show you Exhibits 108 and 109-A and ask you if you recognize the signature there in the place of the maker?

Mr. Foreman: I object to that as duplicitas. We would like to have them shown to her one at a time.

Q. We will take them one at a time. I show you Government's Exhibit 108 and ask you if you can identify the signature there?

A. Shall I call the name out?

Q. I ask you first, can you identify the signature?

A. Yes, I think it is the same signature.

Q. And whose signature is it?

A. Oscar Carrillo and Octavio Saenz.

Q. I show you Exhibit 109-A and ask you if you can identify those signatures in the positions of the maker?

A. Octavio Saenz and Oscar Carrillo.

Q. All right. By looking at those signatures, can you tell if they were paid at your bank? I will as you in regard to 107 first?

A. Yes, sir.

Q. And 108?

A. Yes, sir.

Q. And 109-A?

A. Yes, sir.

Q. Now, then, can you tell from 107 here whether or not this was cashed at your bank initially, or cashed somewhere else first? I ask you if you can tell?

Mr. Foreman: That is 107?

Mr. Wilkey: Yes.

A. It came to us from the San Diego State Bank.

Q. San Diego. All right, in regard to 108. Correction, I called the wrong number. The first one was 108. I now show you 107 and ask you if you can tell whether that was paid first at your bank, or came to you from some place else?

A. That came from the San Diego State Bank.

Q. I show you 109-A, and ask you if you can tell whether this was cashed at the bank initially, or not?

A. Yes, sir, it was deposited to Mr. Yzaguerre's account.

Q. I show you 109-B and ask you if that was paid at your bank originally, or came from somewhere else?

A. I can't read the date on this one.

Q. Tell me, are there other bank stamps on it that show it was processed through other banks?

A. Yes, sir.

Mr. Foreman: May I see 109-B, please? I don't believe I have ever seen it.

Q. I show you 17-I here, and call your attention to certain pencil notations on it and ask you if you can identify the handwriting of the person who made these notations?

A. Well, I think it is Jewell Mayfield.

Q. Who was your immediate superior in the bank?

A. Jewell Mayfield.

Q. Where did she work?

A. On the second floor.

Q. And where did you work?

A. On the second floor.

Q. I show you Exhibit 17-J and ask you if you can identify those penciled notations?

A. They look like Jewell Mayfield's.

Q. I show you 17-L and ask you if you can identify those penciled notations?

A. Yes, it looks like Jewell Mayfield's.

Q. Are you familiar with—strike that. Were the checks like 17-A through P that I have shown you; were they ever microfilmed at the bank?

A. Yes, sir.

Mr. Wilkey: All right.

Mr. Foreman: Your Honor, unless she knows that of her own knowledge, I object to her testifying to it. May I establish—

The Court: Objection sustained. You may go into it, if you wish, Mr. Wilkey.

Q. (By Mr. Wilkey) Do you know of your own knowledge whether the checks were microfilmed or not?

A. I know that we microfilmed my daily records.

Q. What did these daily records you microfilmed include?

A. All the checks presented to the bank for payment.

Q. And where were those microfilm records kept?

A. In the vault.

Q. Did you ever make a search of the records of the bank to see if all that microfilm is present or not?

A. Yes, sir.

Q. And when was the first time you looked at that?

A. When Mr. McCain came up to the bank.

Q. All right, and can you identify that day approximately, by month and year?

A. I think it was the early part of February.

Q. When you looked for the microfilm records, what did you find?

A. That they weren't there.

Q. February, of what year was this?

A. Oh, 1954.

Q. All right, and when you say there weren't there, what was it that was missing?

A. The daily microfilm.

Q. On which checks like this would have been microfilmed?

A. Yes, sir.

Q. And how much of the microfilm was missing?

A. Well, I don't know the years. I don't know what years it covered. There was about three sections, I think.

Q. By three sections, what do you mean?

A. Where the film was filed, and—in the filing cabinets, the sections, each drawer was about as large as a film box.

Q. All right.

A. And there is about ten or twelve drawers in each section.

Q. Ten or twelve drawers in each section?

A. In each row.

Q. All right.

A. There were three sections in each drawer.

Q. Did you, on a subsequent occasion, make a check to see what dates the microfilm, which was missing, covered?

A. Well, I think I did, but I have forgotten the dates on them, what dates were missing.

Q. Could you give us the approximate dates that the missing microfilm covered?

A. Well, I would say for 1949 through 1953.

Q. 1949 through 1953?

A. I am not sure, but that is an approximate.

Q. All right. I show you what has been identified as Government's Exhibit 2, here, and ask you if you recognize the signature here under Certificate of the Depository on the back of this?

A. Yes, sir.

Q. Whose signature is that?

A. Jewell Mayfield's.

Q. All right. Under whose supervision were these annual reports prepared?

A. Under Jewell Mayfield's supervision.

Q. I show you the signature listed under Approval of the School Board, and ask you if you recognize that signature?

A. Yes, I believe that is Octavio Saenz.

Q. May I have back Exhibits 1, 3, 5, and 4, please?

I show you what has been identified here as Government's Exhibit 1, and ask you whose signature this is on the back under Certificate of Depository?

A. Jewell Mayfield.

Q. And whose signature is it under Approval of the School Board?

A. Octavio Saenz.

Q. All right, and I hand you what has been identified as Government's Exhibit 4 and ask you whose signature this is on the back under Certificate of Depository?

A. Jewell Mayfield's.

Q. And whose signature under Approval of the School Board?

A. Octavio Saenz.

Q. All right. I show you what has been identified as Government's Exhibit 5, and ask you whose signature this is, but first, I would like to find the back page of Government's Exhibit 3, which seems to have been detached.

The Clerk: One back page was missing the other day. It was loose, and I hooked it onto another one, Mr. Wilkey.

Mr. Wilkey: If I may, Your Honor, I would like leave to come back to Exhibit 5.

I have here Page 146, and on the back it says 147, and the one attached by cellophane tape to another one, is No. 148.

The Court: And what is the page before the page to which it is attached?

Mr. Wilkey: It is attached to a document which is numbered Page 14—I am not sure, Your Honor, but there are two certificates on this one and none on No. 5.

The Court: May I have them please?

Mr. Wilkey: Yes, Your Honor.

The Court: The Clerk confesses that he found one of the certificates detached, and he stapled it onto Government's Exhibit 4 and it is obvious it was taped onto the wrong one because Government's Exhibit 4, which is a document of 133 pages has a certificate. The page taped on following page 133 is numbered page 148, and it appears obvious that it has been taped on to the wrong exhibit.

Mr. Foreman: Your Honor, we make no point about it.

The Court: Very well. If you want to examine it—the Court, since it was done by the Clerk, the Court wants to get Page 148 in its proper place. Do you wish to examine it?

Mr. Foreman: No, Your Honor. I trust the Clerk of this Court.

The Court: Very well. I will ask that the Clerk now place it where it appears that it belongs.

Q. (By Mr. Wilkey) While the Clerk is doing that, I will refer to Government's Exhibit 3 here and ask if

you can identify this signature on the back of Government's Exhibit 3, under Certificate of Depository?

A. Yes, that is B. F. Donald, Jr.

Q. Is that Mr. B. F. (Tom) Donald, who was cashier of the bank?

A. Yes.

Q. Do you recognize his signature?

A. Yes, sir.

Q. I show you again Government's Exhibit 5 with the page now affixed, and ask you whose signature this is under Certificate of Depository?

A. Jewell Mayfield's.

Q. And whose is it under Approval of the School Board?

A. Octavio Saenz.

Mr. Wilkey: Thank you. No further questions, Your Honor.

The Court: Is the cross examination calculated to be lengthy?

Mr. Foreman: Yes, Your Honor.

The Court: In that event I think—it is now ten minutes to five. I think we should adjourn until tomorrow morning. I will again advise the jury and all others that, as previously announced, who will work on this case only half a day tomorrow, and the Court has other matters set tomorrow afternoon, so at one tomorrow we will adjourn until the next morning. The jury is reminded of the instructions previously given, and court is adjourned until 9:30 tomorrow morning.

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The Court: I believe we are ready for the cross examination of the witness Mildred Daniel.

Mr. Wilkey: Your Honor, while she is coming in, in an excess of caution here, I want to offer, if it has not been offered, Government's Exhibits 22 and 23, being certified copies of the Acceptance of Directors and Amendment to the Articles of Association of the Texas State Bank of Alice. I believe, according to the reporter's record, they have not been offered although they have been read to the jury.

Mr. Foreman: No objection.

The Court: Very well. Government's Exhibits 22 and 23 are admitted in evidence.

Mr. Wilkey: And also, Your Honor, Exhibit 204, which is a stipulation entered into between counsel and which was also read to the jury. I believe the Clerk has that.

Mr. Foreman: No objection, Your Honor. It was my understanding they would both and all be offered, Your Honor.

The Court: Very well. My notes indicate 204 has been admitted, and if the stenographer doesn't have it, 204 is admitted in evidence. What are the others?

Mr. Wilkey: Government's Exhibit 22 and 23.

The Court: They are admitted in evidence.

Mr. Foreman: I only have one question, Your Honor.

3-690 MILDRED DANIEL,

being the witness who was on the stand at the time court recessed on May 9, 1957, resumed the stand at this time and continued her testimony as follows:

3-690 CROSS EXAMINATION

Q. (By Mr. Foreman) Mrs. Daniel, did you as bookkeeper, up to the time you have your present position in the bookkeeping department, alternate between the teller's cage and the bookkeeping department as substitute teller?

A. Shortly after I went to work for the Texas State Bank, I worked as relief teller a very short time.

Q. And by relief teller, what do you mean?

A. If a teller was absent, maybe I would work her window for one day.

Q. Did you sometimes even work for one hour?

A. Maybe, yes, sir.

Mr. Foreman: That is all.

3-690 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) In approximately what year was that, Mrs. Daniel?

A. I went to work there in 1941—approximately '43 or '44.

Q. That is when you worked in the teller's cage?

A. Yes.

Mr. Wilkey: No further questions.

3-691 W. FRANKLIN REED,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

3-691 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. Franklin Reed.

Q. And what are your initials?

A. W. F.

Q. Where do you live?

A. At Freer.

Q. How long have you lived at Freer?

A. Since 1936.

Q. How are you employed?

A. As superintendent of the Freer Public Schools.

Q. How long have you held that position?

A. Since March of 1947.

Q. And what did you do prior to that?

A. For one year, I was high school principal, and before that I was a teacher.

Q. Who keeps the record of expenditures for materials, supplies, teachers, employees of the Freer schools?

A. I do.

Q. You brought those records back through 1949 with you?

A. Yes, sir.

Q. Tell the jury how you make up records of expenditures and checks?

A. For the payroll and the purchases also?

Q. Yes.

A. On the payroll, I make the—work out the payroll and it it sent to the business office. The checks are received back by me and checked, and then they are distributed to the teachers. On the bills, I list the bills by alphabetical order, showing the amount and the budget code, the address of the company, and that is sent, with the invoices, to the business office and I keep a copy of that list, and then the checks come back to me and are checked against the list, and then mailed to the companies that are to receive them.

Q. What process was followed in the years 1949 through 1953 with reference to keeping records of expenditures?

A. The same process.

Q. For the Freer schools?

A. Yes, sir, the Freer schools only.

Q. Back in 1952 and 1953, you would take, or how did you send the list of checks for material and supplies over to the BISD office?

A. They would either be taken—occasionally they might be mailed, but they would be taken to the business office and delivered there.

Q. Who took them?

A. I did.

Q. Who did you give the list to in the year 1952?

A. There wasn't any particular person. Usually the girls in the office there, or Oscar Carrillo who was in the office there at that time.

Q. How did you get the checks back?

A. I would receive them from the business office there.

Q. And where did you receive them?

A. Usually in the business office there.

Q. At Benavides?

A. Yes, sir.

Q. And from whom did you get them?

A. Either from Oscar Carrillo or from the secretary there.

Q. All right. Now, who, if anyone, approved the bills that you incurred out there at the Freer schools?

A. In the Freer schools?

In the Freer schools, they would be approved, the purchases would be approved, and the bills would be approved, by the three trustees there at Freer.

Q. What did you do with your list of checks which had been issued after you had received the checks back from the Benavides office?

A. The copy of the list of checks?

Q. Yes.

A. I have those. I kept those.

Q. What did you mark on that list?

A. Usually, the procedure was to mark the voucher number of the check, kept the voucher number of the check on my copy of it.

Q. All right. May I have Exhibit 10, please?

I will hand you Government's Exhibit 10, and ask you to look through it until you get to the point where the first checks are issued on Freer funds. I believe that is about page 10 or 11.

A. Freer Local Maintenance Fund.

Q. All right. Now, what is the first check shown there to be issued under the Freer Local Maintenance Fund?

A. What do you mean?

Q. What is the number of the check and the date of issuance and the payee?

A. Issued on October 31, 1951, voucher No. 15459—no, 15460—

Mr. Foreman: This is Government's Exhibit 10?

Mr. Bottler: Yes, Government's Exhibit 10.

Mr. Foreman: What page?

Mr. Bottler: I believe it is Page 11.

A. I don't believe the page is numbered here. October 31, 1951, check 15460, and it is made out to Samson Holmes.

Q. For what?

A. For salary.

Q. What was the—what date?

A. Paid on November 5, 1951.

Q. What is the amount of that check?

A. $251.50.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know a Samson Holmes?

A. No, sir.

Q. Is there a Samson Holmes working out at the Freer schools?

A. No, sir.

Q. Do you know anyone working out at the Freer schools who had a name Samuel to Samson Holmes?

A. No, sir,—there was at that time.

Q. What was that name?

A. Sam Holmes.

Q. Did he receive a check for October, 1951?

A. Yes, sir.

Q. And in what amount?

A. The same amount.

Q. $251.50?

A. Yes, sir.

Q. And how much was he being paid a month then?

A. $251.50. He was a teacher and also a bus driver.

Q. What is the next check that appears there on Freer local maintenance?

A. The voucher dated October 30, 1951, check No. 15459, and it is made out to F. A. Knezek.

Q. How much was that check for?

A. $264.25.

Q. Do you know an F. A. Knezek?

A. No, sir.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know anyone whose name is similar to F. A. Knezek?

A. Yes, sir.

Q. Who was that?

A. Frieda A. Knezek or Mrs. Frieda Knezek.

Q. How did she receive her check?

A. That is Frieda Knezek?

Q. Did she receive a check for October, 1951?

A. Yes, sir.

Q. Was she a teacher there?

A. She was a classroom teacher.

Q. And how much did she receive in October, 1951?

A. $264.25.

Q. What is the next check which appears on that list?

A. A check dated October 30, 1951, voucher No, 15453. to A. I. Paterson in the amount of $210.25.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know an A. L. Paterson?

A. No, sir.

Q. Do you know anyone whose name is similar to that?

A. Not too similar. We had an Alfred Peters at that time.

Q. An Alfred Peters?

A. Yes, sir.

Q. Was he paid in October, 1951?

A. Yes, sir.

Q. How did he receive his checks?

A. As Alfred Peters.

Q. What is the next check which appears there?

A. Voucher — date of voucher October 30, 1951. Voucher No. 15473, and it is made out to M. N. Tomas in the amount of $216.16.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know an M. N. Tomas?

A. No, sir.

Q. Do you know anyone whose name is similar to that?

A. At that time, we had a teacher by the name of Maud Thomas.

Q. How did she receive her checks?

A. As Maud Thomas, T-h-o-m-a-s.

Q. Did she receive a check for October, 1951?

A. Yes, sir.

Q. Under what name?

A. As Maud Thomas.

Q. For what sum?

A. I am not sure of that sum. I don't believe it is the same as this sum. I believe it was $264.25.

Q. What is the next check?

A. October 30, 1951, voucher No. 15457 made out to R. A. Sparks in the amount of $255.25.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know an R. A. Sparks?

A. No, sir.

Q. Do you know anyone whose name is similar?

A. Yes, we had a Kate Sparks at that time.

Q. What did she do?

A. She was a classroom teacher.

Q. Under what name did she receive her checks?

A. As Kate Sparks.

Q. Did she receive a check for October, 1951?

A. Yes, sir.

Mr. Foreman: May it please the Court, I submit there is no similarity whatever between Kate Sparks and R. A. Sparks, and it is prejudicial and argumentative, and a suggestion and conclusion of the witness tending to prejudice and inflame the jury, and I think the question—

The Court: What are the names?

Mr. Foreman: R. A. Sparks and Kate Sparks. He picks out anybody and suggests the name—

The Court: I suggest the similarity of the last name. I can see no further similarity and the jury may consider it for what it is worth.

Q. (By Mr. Bottler) Turning over to the next page of Government's Exhibit 10, what is the first check that appears under Freer Local Maintenance Fund?

A. Under date of October 30, 1951, voucher 15463 made out to James Tibbetts, in the amount of $287.13.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know a James Tibbetts?

A. No, sir. I qualify that this way, I know a James A. Tibbetts, who taught at that time, but he did not receive his checks as James Tibbetts.

Q. How did he receive his checks?

A. As J. A. Tibbetts.

Q. And did he receive a check October 30, 1951, as J. A. Tibbetts?

A. Yes, sir.

Q. What is the next name which appears there?

A. October 30, 1951, voucher 15461, J. M. Myers in the amount of $266.66.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you have a J. M. Myers or did you have at that time working for you at the Freer schools?

A. No, sir.

Q. Did you have anyone whose name is similar to that?

A. I had a John S. Myers.

Q. And how did he receive his checks?

A. As John Myers.

Q. Did he receive a check in October, 1951?

A. Yes, sir.

Q. Under what name?

A. As John Myers.

Q. What is the next name which appears?

A. On October 30, 1951, check 15462, made out to James Helms in the amount of $360.13.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you have a James Helms working for you?

A. No, sir.

Q. Did you have anyone whose name was similar to that?

A. Yes, sir.

Q. What was his name?

A. J. W. Helms.

Q. Did he receive a check in October, 1951?

A. Yes, sir.

Q. Under what name?

A. As J. W. Helms.

Q. What is the next name?

A. On October 30, 1951, check No. 19468 made out to J. P. Grace.

Q. For what?

A. For salary in the amount of $252.60.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know J. P. Grace?

A. No, sir.

Q. Was a J. P. Grace working for you at the Freer schools then?

A. No, sir.

Q. Do you have anyone out there who had the same initials that was working at that time?

A. No, sir. The only similarity I would find there would be we had a Grace P. Garrott at that time.

Mr. Foreman: May it please the Court, we object to that as a conclusion or a prejudicial, inflammatory suggestion to the jury, something that is apparently not a similarity, and is argumentative and an unfair inference.

The Court: What are the names compared?

Mr. Foreman: J. P. Grace and Grace Garrott.

Mr. Bottler: Grace P. Garrott.

The Court: J. P. Grace and Grace P. Garrott. I will overrule the objection that it is inflammatory, and the other objection made, and I will instruct the jury that you may consider only the testimony as to facts given. What is the name of the teacher again?

Mr. Foreman: Grace P. Garrott.

The Court: There is a Grace P. Garrott, or there was a Grace P. Garrott who was a teacher, and that a name appears on these rolls J. P. Grace. The jury will decide for itself whether or not there is any similarity, whether or not it has any significance, and you are instructed that you receive this testimony only as to the facts stated.

Mr. Foreman: We interpose the further objection, Your Honor, as to whether Grace P. Garrott was on that roll, the best evidence would be the roll itself.

The Court: Is the roll in evidence?

Mr. Foreman: Yes, sir.

The Court: Very well. The roll is in evidence before the jury, and the jury may inspect it.

Mr. Foreman: I object to the witness testifying as to what it contains. The best evidence is the roll.

Mr. Bottler: Your Honor, if I may make an observation, I don't believe that the roll—which roll are you talking about?

Mr. Foreman: The report. Government's Exhibits 1, 2, 3, 4 and 5, I assume. If it isn't on there—

Mr. Bottler: I was trying to find out whether you were talking about the business records or the annual report. Counsel referred to a roll.

The Court: Government's Exhibit 1, 2, 3, 4 and 5 are in evidence. They are voluminous, and counsel for either side may point out any particular portions thereof to the jury for consideration, or the jury will be at liberty to examine them in full.

Mr. Foreman: That being true, I object to the witness testifying from hearsay something that the best evidence is otherwise in the record.

Mr. Bottler: Your Honor, I would like to reply to counsel's objection.

The Court: The name of the teacher testified to would not be hearsay, would it, if he knows the teacher's name?

Mr. Foreman: If it is as to something on the roll. At any rate, if it is to something — the best evidence—

The Court: He is testifying from Government's Exhibit 10, which is a summary admitted in evidence.

Mr. Foreman: And I submit, Grace P. Garrott doesn't appear on 10.

The Court: As I understand it, he has not testified that name appears on Exhibit 10, has he?

Mr. Foreman: No, he hasn't.

The Court: What is the objection again?

Mr. Foreman: My objection that by permitting the witness to infer that by the use of the term J. P. Grace, some person, unknown, meant Grace P. Garrott is to invade the province of the jury and permit the witness to assume something to the prejudice or detriment of whomever might have been responsible for the preparation of that roll, and therefore the injury of these defendants, and any of them that the Government might later claim had something to do with it.

Mr. Bottler: Your Honor, I don't believe the witness has made any inference. He testified with respect to a teacher—

The Court: The Court has instructed the jury they were to receive no such inferences, they were to receive only the matters of fact testified to, that the name J. P. Grace appears on the rolls and you may look to the roll itself, and that there was a teacher by the name of Grace P. Garrott and you will not receive or consider any inferences of identity from the witness, if any such inferences were made.

Mr. Foreman: May it please the Court, I don't desire to continue delaying or objecting, or making these objections into the record. May we at this time object to this witness inferring or attributing to any of the future—for any given person as being conjecture, inference, or a conclusion of the witness, and it is being asked by the prosecution as to whether or not the check was there or not, which is the ultimate fact, and whether or not the person was paid and to whom, I think somebody might have meant or suggested to the jury his opinion as to what accurred, which is the practice to which we, the defense, in this case object. I think he ought to be limited to develop any names there that did not appear, and any others that he did not receive checks for, that amounts to an argument back and forth between witness and prosecuting attorney in behalf of the prosecution instead of affirmative evidence and calls for a conclusion and conjecture as to what was meant.

The Court: I will hear the United States.

Mr. Bottler: Your Honor, I don't believe there is anything before the Court. If I may be permitted to ask questions of the witness, I think it will be a little bit easier to take care of these objections and answer them as they come up.

Mr. Foreman: My request was to keep from making any objection each time, and ask that I might have a ruling now and let the testimony go faster and save time.

The Court: The Court is interested in speeding up the testimony. The suggestion of defense counsel is that the